APPENDIX A

CALIFORNIA ALCOHOLIC BEVERAGE CONTROL ACT

Chapter 330, Laws 1935.

AN ACT to license, regulate and control the manufacture, transportation, sale, purchase, possession and disposition of alcoholic beverages; to levy an excise tax on the sale of alcoholic beverages; to provide for the licensing of the manufacture, distribution and sale of alcoholic beverages; to prescribe penalties for the violation of this Act; to make an appropriation for the enforcement of this Act; to take effect immediately.

The people of the State of California do enact as follows:

Section 1. This Act is known and may be cited as the "Alcoholic Beverage Control Act."

Section 2. The following words, terms, and phrases when used in this Act have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

(b) "Alcoholic beverage" means and includes alcohol, spirits, liquor, wine, beer and every liquid or solid containing alcohol, spirits, wine or beer, and which contains one-half of one per cent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed or combined with other substances.

(c) "Beer" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination thereof in water, and shall include ale, porter, brown, stout,

lager beer, small beer and strong beer but shall not include sake known as Japanese rice wine.

(d) "Distilled spirits" means ethyl alcohol, spirits of wine, whiskey, rum, brandy, gin and other distilled spirits for beverage use, including all dilutions and mixtures thereof.

(e) "Wine" means the product obtained by the fermentation of grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage fortified with grape brandy and containing not more than twenty-four per cent of alcohol by volume and shall include sake known as Japanese rice wine.

(f) "Person" includes any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate or any other group or combination acting as a unit, and the plural as well as the singular number.

(g) "Board" means the State Board of Equalization of the State of California.

(h) "Club" means a corporation or association which is the owner, lessee or occupant of an establishment operated solely for objects of a social or athletic nature, having a bona fide membership list, and the majority of the members of which pay dues at least once in every year, but not for pecuniary gain, and the property as well as the advantages of which belong to the members.

(i) "Manufacturer" means every person, who within the State of California, brews, ferments, distills, cuts, blends, rectifies, or otherwise processes, produces, or manufactures alcoholic beverages containing one-half of one per cent or more of alcohol by volume; provided that any person who manufactures not to exceed two hundred gallons of wine per year for his own consumption, shall not, because of such manufacture, be considered a manufacturer within the meaning of this Act.

(j) "Rectifier" means every person who colors, flavors, or otherwise processes distilled spirits by distillation, blending, percolating or other processes.

(k) "Importer" means every person who, in the case of alcoholic beverages brought into this State from outside of this State, is the first in possession thereof within this State after the Act of importation is completed.

(l) "Sell" or "sale" and the phrase "to sell" means and includes any of the following: to exchange, barter, traffic in; to solicit or receive an order for; to keep or expose for sale; to serve for a consideration with or without meals; to traffic in or deliver for value or in any way other than gratuitously; to possess with intent to sell. The transfer of title to alcoholic beverages unaccompanied by a transfer of possession of such beverages shall not be deemed a sale of such beverages.

(m) "Public bar" means any bar, counter or other structure over which beverages of an alcoholic content in excess of four per cent by weight are sold or served by the drink to the public for consumption on the premises; provided, however, that counters or other structures used for the sale, service and consumption of meals, and not as a subterfuge for a public bar, shall not be deemed to be a public bar within the meaning of this Act. "Public barroom" or "public saloon" means any room to which the public has access in which is maintained a "public bar."

(n) "Package" or "original package" means any container or receptacle used for holding alcoholic beverages which is corked or sealed with a stub, stopper or cap, or in any other manner.

(o) "To bottle" or "to package" means to bottle, barrel, or otherwise place alcoholic beverages in a container.

(p) "Distiller" means a manufacturer who produces distilled spirits from naturally fermented material.

(q) "Proof spirits" means that alcoholic liquor which contains one-half of its volume of pure ethyl alcohol of a specific gravity of 0.7939 at sixty degrees Fahrenheit, referred to water at sixty degrees Fahrenheit as unity.

(r) "Proof gallon" means a gallon of proof spirits, or an equivalent amount of alcohol.

(s) "Wholesaler" means and includes every person other than a manufacturer or rectifier who is engaged in business as a broker, jobber or wholesale merchant, dealing in alcoholic beverages.

(t) "Wholesale sale" or "sale at wholesale" means a sale to any person for purposes of resale.

(u) "Retailer's on-sale license" means and includes on-sale beer licenses, on-sale beer and wine licenses, and on-sale distilled spirits licenses.

(v) "Gallon" or "Wine gallon" means that liquid measure containing two hundred thirty-one cubic inches.

(w) "Wine manufacturer" means any person engaged in the manufacture of wine as the term "wine" is defined in this Act.

(x) "Still" means a still used in the production or capable of being used in the production of alcoholic beverages, and does not include stills or apparatus used solely in the production of distilled water or substances other than alcoholic beverages.

Section 3. On and after July 1, 1935, no person shall perform any Act or Acts which would constitute such person a manufacturer, rectifier, importer, wholesaler, or retailer of any alcoholic beverage within the meaning of this Act or shall package, label or sell any alcoholic beverage unless such person is authorized to do so by a license duly issued pursuant to the provisions of this Act, or pursuant to the provisions of the State Liquor Control Act, Chapter 658, Statutes of 1933. Any person violating any provision of this section shall be guilty of a misdemeanor.

Section 4. On and after July 1, 1935, every still located within the limits of this State must be registered with the board. Every person owning or possessing a still who fails to register the same as herein required or who fails to obtain a license issued pursuant to the provisions of this Act authorizing the ownership and possession of such still shall be guilty of a felony.

The board may seize and summarily destroy any still which is not registered or for which a license has not been obtained as required by this Act.

Section 5. The following are the types of licenses to be issued under this Act and the annual fees to be charged therefor:

1. Beer manufacturer's license	$750.00 per year
2. Wine manufacturer's license, one thousand gallons or less per year	5.00 per year
Over one thousand gallons to two thousand five hundred gallons per year	10.00 per year
Over two thousand five hundred gallons to five thousand gallons per year	20.00 per year
Over five thousand gallons to twenty thousand gallons per year	40.00 per year
Over twenty thousand to one hundred thousand gallons per year	75.00 per year
Over one hundred thousand to two hundred thousand gallons per year	100.00 per year
Over two hundred thousand gallons to one million gallons a year	150.00 per year
For each million gallons or fraction thereof over a million gallons an additional	100.00 per year
3. Distilled spirits manufacturer's license	250.00 per year
4. Still license	10.00 per year per still
5. Rectifier's license	250.00 per year
6. Fruit brandy manufacturer's license	150.00 per year
7. Distilled spirits and wine importer's license	100.00 per year
8. Beer importer's license	500.00 per year
9. Wine bottling or packaging license	10.00 per year
10. Distilled spirits bottling or packaging license	250.00 per year
11. Beer bottling or packaging license	500.00 per year
12. Distilled spirits wholesaler's license	250.00 per year
13. Beer and wine wholesaler's license	50.00 per year
14. Retail package off-sale beer and wine license	10.00 per year
15. Retail package off-sale distilled spirits license for the first $10,000 retail sales per year	100.00 per year
For each $1,000 retail sales or fraction thereof over $10,000 per year	10.00 per year
16. Industrial alcohol dealer's license	50.00 per year
17. On-sale beer license	25.00 per year
18. On-sale beer and wine license	75.00 per year
19. On-sale beer and wine license for trains (per train)	15.00 per year
20. On-sale beer and wine license for boats (per boat)	50.00 per year
21. On-sale distilled spirits license	As set by the board

The fees specified above shall be reduced twenty-five per cent for each full quarter of a year elapsing between the first day of the year for which the license is issued and the date on which the application for the license is filed with the board; provided, that where an application clearly indicates that the applicant does not desire to exercise the privileges granted by the license applied for until on or after the beginning of the quarterly period following the quarterly period in which the application is filed with the board, such fees shall be reduced twenty-five per cent for each full quarter of a year elapsing between the first day of the year for which the license is issued and the date so indicated in the application.

Where the fee for any license is graduated according to the amount of alcoholic beverages manufactured or sold under the license, and the license is applied for after the beginning of the year, the amount of alcoholic beverage authorized to be manufactured or sold under the license shall be reduced proportionately with the reduction in fee provided in the preceding paragraph in accordance with such rules and regulations as the board may prescribe.

Section 6. Except as otherwise provided in this Act and subject to the provisions of Section 22 of Article XX of the Constitution, the licenses provided for in the preceding section shall authorize the person to whom issued to exercise the following rights and privileges and no others at the premises for which issued during the year for which issued.

(a) Any manufacturer's license authorizes the person to whom issued to become a manufacturer of the alcoholic beverage specified in the license, to package, mix, flavor and color and label the same and to export or sell such alcoholic beverages to persons holding licenses issued by the board authorizing the sale of such alcoholic beverage; provided that a wine manufacturer's license authorizes the manufacture of grape brandy to be used exclusively for fortifying purposes by its holder on the premises for which issued.

(b) A still license authorizes the person to whom issued to own or possess the number of stills indicated in the license upon the premises for which issued.

(c) A rectifier's license authorizes the person to whom issued to cut, blend, mix, flavor, color and bottle distilled spirits and to export or sell such products to persons holding licenses issued by the board authorizing the sale of distilled spirits.

(d) Any importer's license authorizes the person to whom issued to become an importer of alcoholic beverages specified in the license and to export such alcoholic beverage.

(e) A bottling or packaging license authorizes the labeling, bottling or packaging of the alcoholic beverages specified in the license.

(f) Any wholesaler's license authorizes the sale of the alcoholic beverage specified in the license only to persons holding licenses issued by the board authorizing the sale of such alcoholic beverage.

(g) An off-sale beer and wine license authorizes the sale, to consumers only and not for resale, of beer in packages and in quantities of thirty-one gallons or less, per sale and the sale of wine in packages and in quantities of fifty-two gallons or less, per sale for consumption off the premises where sold.

(h) An off-sale distilled spirits license authorizes the sale, to consumers only and not for resale, of distilled spirits in quantities of less than five gallons per sale and in packages of one gallon or less for consumption off the premises where sold.

(i) An industrial alcohol dealer's license authorizes the sale of undenatured ethyl alcohol or other distilled spirits in packages of more than one gallon for use in the trades, professions or industries.

(j) Any on-sale license authorizes the sale of the alcoholic beverage specified in the license for consumption on the premises where sold. An on-sale beer and an on-sale

beer and wine license also authorizes the exercise, with respect to the particular beverage or beverages mentioned in such license, of the rights and privileges granted by an off-sale beer and wine license. On trains and boats, under such licenses, alcoholic beverages may be sold only to passengers or employees.

Section 7. Each license issued under this Act shall be issued to a specific person, and, except in the case of licenses authorizing the sale of alcoholic beverages on trains or boats, shall be issued for a specific location, the principal address of which shall be indicated on the license. Separate licenses shall be issued for each of the premises of any business establishment having more than one location.

Licenses for trains and boats shall be based on the average number in actual operation, during the license year, of each class of operating units, viz., trains and boats upon which the license privileges are exercised, such average number to be determined as the board may prescribe.

Each license issued under this Act is separate and distinct, shall be nontransferable from one person to another, and shall be transferable from the premises for which issued only as may be permitted by the board, upon payment of a transfer fee of five dollars for each license.

Whenever a license certificate issued under the Act is lost or destroyed, the board shall issue a duplicate license upon the payment of a fee of five dollars.

Section 8. All retailer's on-sale licenses shall be issued on a calendar year basis and shall automatically expire at midnight on the last day of December of the year for which issued. All other licenses issued under this Act shall be issued on the basis of a fiscal year commencing July first and ending June thirtieth, and shall automatically expire at midnight on the last day of June of the year for which issued.

All licenses issued under the provisions of the State Liquor Control Act, Chapter 658, Statutes of 1933, which authorize the sale of liquor specified in the licenses for consumption on the premises shall automatically expire at midnight on December 31, 1935.

All other licenses issued under said Act and all licenses issued under the provisions of Chapter 178, Statutes of 1933, shall automatically expire at midnight on June 30, 1935. One-half the annual fee for any license so expiring at midnight on June 30, 1935, shall be allowed as a credit against the fee for any comparable license issued under this Act during 1935.

For failure to reapply for a license prior to the time when any license expires, the board may by regulation prescribe that in addition to the license fees specified in Section 5 hereof a penalty of not to exceed twenty-five per cent of such fees must be paid.

Section 9. Upon receipt of any license issued hereunder the licensee shall sign said license and shall post the license in a conspicuous place upon the licensed premises. Licenses issued for trains or boats may, in lieu of being posted upon the train or boat for which issued, be posted in such other place in this State as the board shall designate.

Section 10. To obtain a license under this Act application therefor, accompanied by the license fee therefor, must be made to the board upon a form prescribed by the board. The application must contain the name of the applicant, and in the case of a copartnership, the names of the individual parties, in the case of a corporation the principal officers and directors, the location of the premises for which a license is applied and such other information as the board may require to assist it in determining whether the applicant and the premises qualify for a license. The board may require that the application for any on-sale license be verified under oath and be endorsed by five freeholders or householders of the city or county in which the applicant resides or the premises are located.

Section 11. Upon receipt of an application for a license and the license fee the board shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied qualify for a license. The board must deny an application for a license if either the

applicant or the premises for which a license is applied do not qualify for a license under this Act.

If an application is denied, three-fourths of the license fee paid, or an amount equal to the license fee paid less ten dollars, whichever is greater, shall be returned to the applicant and the balance shall be deposited in the alcoholic beverage control fund hereinafter created.

Section 12. No on-sale distilled spirits license shall be issued to any applicant who is not a citizen of the United States; and where a corporation, partnership or other business association is the applicant no such license shall be issued to it unless the majority of the members of the board of directors and all of its officers who are charged with the duty of managing, directing or conducting said business, are citizens of the United States.

Section 13. The board is specifically authorized to refuse the issuance of on-sale retail licenses for premises located within the immediate vicinity of churches, hospitals, schools and children's public playgrounds.

Section 14. No retail license shall be issued to any applicant for any premises for which a license has been forfeited or revoked, during the three months immediately preceding the filing of such application.

Section 15. No retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county, city and county or municipality unless such premises had been used in the exercise of such rights and privileges at a time prior to the effective date of any such valid zoning ordinance.

Nothing in this Act contained shall be deemed to interfere with the powers of cities, counties, and cities and counties, conferred upon them by Chapter 734, Statutes of 1917, the same being An Act of the Legislature entitled, "An Act to provide for the establishment within municipalities of districts or zones within which the use of property, height of

improvements and requisite open spaces for light and ventilation of such buildings, may be regulated by ordinance."

Section 16. No retailer's on-sale license shall be issued to any person to whom or for any premises for which a manufacturer's, importer's, wholesaler's or rectifier's license shall have been issued, and no manufacturer's, importer's, wholesaler's or rectifier's license shall be issued to any person to whom or for any premises for which a retailer's on-sale license is issued.

Section 17. No license shall be issued to any applicant for any premises situated more than one mile outside the limits of an incorporated city or town and within four miles of any camp or establishment of men numbering twenty-five or more, engaged upon or in connection with the construction, repair or operation of any work, improvement or utility of a public or quasi public character; provided, however, that nothing in this section shall be deemed to apply to the renewal of any licenses for any premises which have been established and licensed under this Act or under the State Liquor Control Act, Chapter 658, Statutes of 1933 at least six months prior to the establishment of such camp or establishment of men.

Section 18. Retailer's "on-sale beer and wine licenses" or "on-sale distilled spirits licenses" shall be issued only to bona fide hotels, restaurants, cafes, cafeterias, railroad dining or club cars, passenger ships or other public eating places, or bona fide clubs after such clubs have been lawfully operated for not less than one year.

Section 19. Fruit brandy manufacturer's licenses shall be issued only to persons holding a wine manufacturer's license.

Section 20. Industrial alcohol dealers' licenses shall be issued only to persons to whom, and for premises, for which, either a distilled spirits manufacturer's importer's or wholesaler's license has been issued.

Section 21. Before commencing to engage in the sale of any alcoholic beverage at any premises, notice of intention to so commence, must be posted in a conspicuous place at the entrances to such premises. Licenses will not be issued for such premises until such notice has been so posted for fifteen consecutive days immediately prior to the issuance of the licenses. The notice herein specified shall be in such form as the board shall prescribe.

Upon the receipt by the board of an original application for any license, notice thereof shall immediately be given by said board to the sheriffs, chiefs of police and district attorneys of such locality, and to the city clerks and city planning commissions in such locality upon request.

Section 22. In the case of any applicant whose license fee varies with the total amount of alcoholic beverages manufactured or sold, the applicant shall at the time of filing application for license, accompany such application with the minimum license fee required, or such larger fee as the applicant shall elect.

The licensee shall report quarterly at such time and in such manner as the board may prescribe, the amount of alcoholic beverages manufactured or sold during the preceding quarter.

If any such report shows that the total amount of alcoholic beverages manufactured or sold during the year exceeds the amount permitted annually by the license fee already paid the board, the licensee shall accompany such report with such additional license fee as shall authorize him to continue to manufacture or sell additional amounts of alcoholic beverages in accordance with the schedule provided in Section 5.

Failure to report the amount of alcoholic beverages manufactured or sold as herein required and to pay such additional license fees when due within ten days of the date set by the board, shall be considered a violation of this Act, and shall also subject the licensee to an arbitrary assessment of such license due by the board.

Failure to make a final report and payment of any license due at the end of any tax year shall operate to prevent the board from issuance of any license to any delinquent licensee.

Section 23. An excise tax is hereby imposed upon all beer and wine sold in this State by a manufacturer or importer on or after July 1, 1935, at the following rates:

(a) On all beer, sixty-two cents for every barrel containing thirty-one gallons, and at a proportionate rate for any other quantity;

(b) On all wine, two cents per wine gallon, and at a proportionate rate for any other quantity;

(c) On champagne, or sparkling wine, whether naturally or artificially carbonated, three cents per pint or fraction thereof.

Beer and wine consumed by employees of manufacturers or importers upon the premises of such manufacturers and importers shall be exempt from tax under such rules and regulations as the board may prescribe.

It shall be presumed, for the purposes of this Act, that all beer and wine produced, brewed, fermented, or manufactured in this State by a manufacturer, or delivered to a manufacturer or importer here, has been sold by such manufacturer or importers unless proven to the satisfaction of the board that such beverages are still in the possession of such manufacturer or importer, or, prior to the termination of such possession, have been lost through evaporation, leakage, spillage or destruction by the elements.

Section 24. An excise tax is hereby imposed upon all distilled spirits sold in this State on and after July 1, 1935, at the following rates:

On all distilled spirits of proof strength or less, two cents on each bottle containing two ounces or fraction thereof; five cents on each bottle containing eight ounces or fraction thereof greater than two ounces; ten cents on each bottle containing one pint or fraction thereof greater than a half pint; sixteen cents on each bottle containing one-fifth gallon or fraction thereof greater than one pint; twenty cents on each bottle containing one quart or fraction thereof greater than one-fifth gallon; forty cents on each bottle containing one-half gallon or fraction thereof, greater than one quart; eighty cents on each bottle contain-

ing one gallon or fraction thereof greater than one-half gallon.

All distilled spirits in excess of proof strength shall be taxed at double the above rate.

Section 25. Every person who engages in business as, or becomes a manufacturer or importer of beer or wine, as defined in this Act, shall be required by the board to file with said board a bond duly executed by such person as principal and a corporation such as is mentioned in Section 1056 of the Code of Civil Procedure in this State, as surety, payable to the people of the State of California, conditioned upon the payment of all excise taxes and penalties assessed against or imposed upon such person, arising out of this Act.

The bond shall contain the provisions and be in the form substantially as follows:

"Know all men by these presents:

That we,....., as principal, and..... a corporation duly organized and doing business under and by virtue of the laws of....., and duly licensed for the purpose of making, guaranteeing or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as surety, are held and firmly bound unto the people of the State of California in the sum of.....dollars ($.....), lawful money of the United States of America, for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that,

Whereas, the above bounden principal has made application to the State Board of Equalization of the State of California for a license authorizing said principal to engage in business as a manufacturer or importer of beer or wine within the meaning of the Alcoholic Beverage Control Act and amendments thereto, and

Whereas, under the terms of said Act a bond is required of said principal and good and sufficient surety, payable to

the people of the State of California, conditioned upon the payment to the State of California of all of the excise taxes and penalties assessed against or imposed upon said principal arising out of said Act.

Now therefore, if the above bounden principal shall pay all excise taxes and penalties assessed against or imposed upon said principal arising out of said Act, or if the board, within thirty days after any default by said principal in the payment of any such tax or penalty shall fail to notify the surety thereof, personally or by mail, then this obligation shall be null and void: otherwise to remain in full force and effect.

That said bond shall remain in force and effect until the surety or sureties are released from liability by said board or until said bond is canceled by said surety or sureties as hereinafter provided.

The surety herein reserves the right to withdraw as such surety, except as to any liability already incurred or accrued hereunder, and may do so upon giving written notice of such withdrawal to the State Board of Equalization; provided, however, that no withdrawal shall be effective for any purpose until thirty days shall have elapsed from and after receipt of such notice by said board; and further provided, that no withdrawal shall in anywise affect the liability of said surety arising out of any sale of beverage made by the principal herein prior to the expiration of such period of thirty days, regardless of whether or not the excise tax based upon such sale shall have been due prior to the expiration of such period.

Signed and sealed this.....day of....., 193...

.....
Principal.

By.....

.....
Surety.

By.....”

The total amount of the bond or bonds required of any such manufacturer or importer shall be fixed by the board and may be increased or reduced by said board at any time subject to the limitations herein provided. In fixing the total amount of the bond or bonds required of any such manufacturer or importer, the board must require a bond or bonds equivalent in total amount to one and one-half times his estimated monthly excise tax determined in such manner as said board may deem proper; provided, that the total amount of the bond or bonds required of any such manufacturer or importer shall never be less than five hundred dollars.

Section 26. Every manufacturer or importer of alcoholic beverages taxable under this Act shall render to the board on or before the tenth day of August, 1935, and on or before the tenth day of each month thereafter, a verified statement of the quantity of such alcoholic beverage sold by such manufacturer or importer during the preceding calendar month. Such statement shall be in such form as the board may prescribe, together with such other information as the board may require.

If any manufacturer or importer shall fail, neglect or refuse to file said report, within the time prescribed for filing such report, the board must note such failure, neglect or refusal upon the tax roll hereinafter described, and must estimate the amount of alcoholic beverage sold by said manufacturer or importer assessing the excise tax thereon, adding to said excise tax a penalty of fifteen per cent thereof for failure, neglect, or refusal to report. Such action of the board shall be final, and subject only to review by a court of competent jurisdiction.

The board shall, on or before the twenty-second day of August, 1935, and on or before the twenty-second day of each calendar month thereafter, assess the excise tax due hereunder, and prepare and complete an assessment roll showing the amount of the excise tax assessed against each manufacturer and importer and immediately deliver said assessment roll to the State Controller.

Excise taxes herein required to be paid by the manufacturer or importer shall be payable in monthly installments to the State Controller for the month ending July 31, 1935, and for each and every calendar month thereafter. The amount of such excise tax for each month shall be paid on or before the tenth day of the second calendar month thereafter, and if not paid prior thereto, shall become delinquent at five o'clock in the afternoon of said day, and ten per cent penalty shall be added thereto for delinquency.

Section 27. The board may examine the books and records of any person required to make said statement, and may also examine the books and records of any licensee as herein defined, and such books and records shall at all times be subject to the inspection of said board or its representatives during regular business hours.

If any examination or investigations made by the board shall disclose that any reports of manufacturers or importers theretofore filed with said board by said manufacturers or importers pursuant to the requirements of this Act, have shown incorrectly the amount of alcoholic beverage sold or the excise tax accruing thereon, said board shall have the power and is hereby authorized, to make such changes in subsequent assessments of said manufacturers or importers under this Act as it may deem necessary to correct the errors disclosed by its examination of the records of said manufacturers or importers or its investigations in pursuance of its powers hereunder.

Section 28. Any person refusing to permit the board or any of its representatives to make the inspection for which provision is made in the preceding section or failing to keep books of account as may be prescribed by the board or failing to preserve such books for the inspection of the board for such time as the board may deem necessary, and any person altering, canceling or obliterating entries in such books of account for the purpose of falsifying the records of sales of alcoholic beverages made under this Act shall be guilty of a misdemeanor and shall be punished by

a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment.

Section 29. No excise tax shall be imposed by this Act in any transaction whereby any alcoholic beverages are sold and delivered by a manufacturer or importer to another manufacturer or importer holding a valid manufacturer's or importer's license.

In order to obtain the exemption granted under this section, the manufacturer or importer selling alcoholic beverages must present to the board at the time of filing his monthly report required under Section 26, a verified statement, in a form to be prescribed by the board, obtained from the purchaser showing the date, kind and quantity of alcoholic beverage sold and delivered to the purchaser, that the purchaser holds at the time of such purchase, a manufacturer's or importer's license, the number of such license, and such other information as the board may require. A copy of this statement must at all times be kept on file at the place of business of the manufacturer or importer desiring to obtain the exemption herein granted.

Section 30. None of the provisions of this Act shall apply, or be construed to apply, to commerce with foreign Nations or commerce with the several States, except in so far as the same may be permitted under the provisions of the Constitution and laws of the United States nor shall the excise tax imposed by Section 23, of this Act apply to alcoholic beverages sold and actually exported from this State by a licensed manufacturer or importer, or by a subsidiary of a licensed manufacturer or importer, but every manufacturer and importer shall be required to report such exports to the board in such detail as the board may require, otherwise the exemption herein granted shall be null and void and such alcoholic beverage shall be considered sold in this State subject fully to the provisions of this Act.

In support of any exemption from excise taxes claimed under this section on account of the exportation of alcoholic beverage every manufacturer must execute an export certificate in such form as shall be prescribed, prepared and furnished by the board containing a sworn statement made by some person having knowledge of the fact of such exportation that the alcoholic beverage has been exported from this State, and giving such detail with reference to shipment as said board may require. All exportation certificates must be completed and on file in the office of the board within thirty days after the close of the calendar month in which the shipments were made and no certificate not completed and filed within such period shall be recognized for any purpose by the State or any agency thereof. The board may demand of any manufacturer or importer such additional data as is deemed necessary by said board in support of any such certificate and failure to supply such data will constitute waiver of all right to exemption claimed by virtue of said certificate.

Section 31. In any case in which any tax, interest or penalty imposed under this Act is not paid when due the Controller shall notify the board and may file in the office of the county clerk of Sacramento County or any other county a certificate specifying the amount of the tax, interest and penalty due, the name and last known address of the manufacturer or importer liable for the same, that the board has complied with all the provisions of this Act, in relation to the computation and levy of the tax and a request that judgment be entered against the manufacturer or importer in the amount of the tax, interest and penalty set forth in the certificate. The county clerk immediately upon the filing of such certificate shall enter a judgment for the people of the State of California against the manufacturer or importer in the amount of the tax, interest and penalty set forth in the certificate. The judgment may be filed by the county clerk in a loose-leaf book entitled "Special Judgments for State Excise Tax."

An abstract of such judgment or a copy thereof may be recorded with the county recorder of any county and

from the time of such recording, the amount of the taxes, interest and penalty therein set forth shall constitute a lien upon all the real property of the manufacturer or importer in such county, owned by him or which he may afterwards and before the lien expires acquire, which lien shall have the force, effect and priority of a judgment lien. Execution shall issue upon such a judgment upon the request of the Controller in the same manner as execution may issue upon other judgment and sales shall be held under such execution as prescribed in the Code of Civil Procedure. In all proceedings under this section the Controller shall be authorized to Act on behalf of the people of the State of California.

In the event that any manufacturer or importer is delinquent in the payment of the excise tax herein provided for, the Controller shall notify the board forthwith and may give notice of the amount of such delinquency by registered mail to all persons having in their possession or under their control, any credits or other personal property belonging to such manufacturer or importer, or owing any debts to such manufacturer or importer, at the time of receipt by them of such notice, and thereafter any person so notified shall neither transfer nor make other disposition of such credits, other personal property or debts until the Controller shall have consented to a transfer or disposition, or until twenty days shall have elapsed from and after the receipt of such notice. All persons so notified must, within five days after receipt of such notice, advise the Controller of any and all such credits, other personal property or debts, in their possession under their control or owing by them, as the case may be.

Whenever any manufacturer or importer shall be delinquent in the payment of the excise tax herein provided for, the Controller or his duly authorized representative may proceed forthwith to collect the excise tax due from such manufacturer or importer in the following manner: The Controller shall seize any property, real or personal, of the taxpayer, and thereafter sell at public auction such property so seized, or a sufficient portion thereof, to pay the excise tax due hereunder, together with any penalty

or penalties imposed hereby for such delinquency, and any and all costs that may have been incurred on account of such seizure and sale. Notice of such intended sale and the time and place thereof, shall be given to such delinquent manufacturer or importer and to all persons appearing of record to have an interest in such property, in writing at least ten days before the date set for such sale by inclosing such notice in an envelope addressed to said manufacturer or importer at his last known residence or place of business in this State if any, and, depositing same in the United States registered mail, postage prepaid, and by publication for at least ten days before the date set for such sale in a newspaper of general circulation published in the county or city and county in which the property seized is to be sold; provided, however, that if there be no newspaper of general circulation in such county or city and county, then by the posting of such notice in three public places in such county or city and county for said ten days period. The said notice shall contain a description of the property to be sold, together with a statement of the amount of the excise taxes, penalties and costs, the name of the manufacturer or importer and the further statement that, unless such excise taxes, penalties and costs are paid on or before the time fixed in said notice for such sale, said property, or so much thereof as may be necessary, will be sold in accordance with law and said notice.

At any such sale, the property shall be sold by the Controller of by his duly authorized agent in accordance with law and said notice, and the Controller shall deliver to the purchaser a bill of sale for the personal property, and a deed for any real property so sold, and such bill of sale or deed shall vest title in the purchaser subject to a right of redemption as prescribed in the Code of Civil Procedure upon sales of real estate on execution. The unsold portion of any property so seized may be left at the place of sale at the risk of the manufacturer or importer. If, upon any such sale, the moneys so received shall exceed the amount of all license taxes, penalties and costs due the State from such manufacturer or importer, any such excess shall be returned to the manufacturer or importer, and his receipt

therefor obtained; provided, however, that if any person having an interest in or lien upon the property has filed with the Controller prior to any such sale notice of such interest said Controller shall withhold any such excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If, for any reason, the receipt of such manufacturer or importer shall not be available, the Controller shall deposit such excess moneys with the State Treasurer, as trustee for such owner, subject to the order of such manufacturer or importer, his heirs, successors or assigns.

The Controller must also immediately transmit notice of such delinquency to the Attorney General who shall at once proceed to collect all sums due to the State from any such manufacturer or importer hereunder by bringing suit against the necessary parties to effect forfeiture of the bond or bonds of the manufacturer or importer, reducing any deficiency to judgment against the manufacturer or importer.

It is expressly provided that the foregoing remedies of the State shall be cumulative and that no action taken by the board, Controller or Attorney General shall be or be construed to be an election on the part of the State or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this Act.

In any suit brought to enforce the rights of the State hereunder the assessment roll prepared by the board pursuant to Section 26 of this Act, or a copy of so much thereof as is applicable in such suit, duly certified by the Controller showing unpaid excise taxes assessed against any manufacturer or importer, shall be prima facie evidence of the assessment of the excise tax, the delinquency thereof, the amount of the excise tax, penalties and costs due and unpaid to the State, that the manufacturer or importer is indebted to the people of the State of California in the amount of such excise tax and penalties therein appearing unpaid and that all the forms of law in relation to the assessment and levy of such excise tax have been fully complied with by all persons required to perform administrative duties under this Act.

Section 32. Any action to recover any excise tax levied pursuant to this Act and paid under protest must be instituted within sixty days after the payment of such excise tax, and failure to bring suit within said sixty days shall constitute waiver of any and all demands against this State on account of alleged overpayment of excise taxes hereunder. No grounds of illegality of the excise tax shall be considered by the court other than those set forth in the protest filed at the time of the payment of the excise tax.

If in any such action judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any excise taxes due from the plaintiff under this Act, and the balance of the amount of the judgment shall be refunded to the plaintiff. In any such judgment, interest shall be allowed at the rate of six per cent per annum upon the amount of excise tax found to have been illegally collected from the date of payment of such excise tax to the date of allowance of credit on account of such judgment or to a date preceding the date of the refund warrant by not more than thirty days, such date to be determined by the Controller.

In no case shall any judgment be rendered in favor of the plaintiff in any action brought against the State Treasurer to recover any excise tax paid hereunder, when such action is brought by or in the name of an assignee of the manufacturer or importer paying said excise tax, or by any person, other than the person who has paid such excise tax.

Section 33. The tax imposed by Section 24 of this Act upon the sale of distilled spirits shall be collected by means of attaching to each package containing such distilled spirits a stamp or stamps of a denomination equivalent to the amount of excise tax imposed upon the sale of the contents of such package. Such stamps shall be attached by the holders of on- or off-sale distilled spirits licenses issued under this Act and by the holders of on-sale licenses for liquor other than beer and wine issued under the State Liquor Control Act, immediately upon opening the original cases in which the distilled spirits were packed and in which such distilled spirits were purchased from the manufac-

turer, rectifier, importer, or wholesaler. In the case of distilled spirits not in original cases at the time of purchase the stamps shall be attached immediately upon bringing such distilled spirits upon the premises for which such on- or off-sale licenses are issued.

Such stamps shall be sold by the board only to persons holding valid distilled spirits manufacturer's licenses, rectifier's licenses, distilled spirits and wine importer's licenses or distilled spirits wholesaler's licenses issued under this Act or the State Liquor Control Act; provided, that until July 1, 1935, the board shall sell a sufficient number of such stamps, to stamp stocks of distilled spirits on hand, to persons holding valid on- or off-sale licenses for liquor other than beer and wine issued under the State Liquor Control Act; provided further, that the board may thereafter, in its discretion, sell such stamps to such holders of on- or off-sale distilled spirits licenses as it may determine.

On and after July 1, 1935, all distilled spirits delivered by any manufacturer, rectifier, importer or wholesaler of distilled spirits to any person holding an on- or off-sale distilled spirits license issued under this Act or an on-sale license for liquor other than beer and wine issued under the State Liquor Control Act, must be accompanied by a sufficient number of stamps purchased from the board, to stamp the packages, containing such distilled spirits. Every manufacturer, rectifier, importer or wholesaler of distilled spirits who delivers distilled spirits in violation of this section shall be guilty of a misdemeanor.

Such stamps shall be of such size, type, and character as the board shall determine; provided, that all such stamps must be of a character, design, and process which will give the State the maximum amount of protection against counterfeiting. The board shall have full charge and control of the issuance, securing, or purchase and of the sale of all such stamps and shall keep a record of all stamps sold.

At the time such stamps are attached to the packages of distilled spirits, they shall immediately be canceled by indelibly writing or stamping thereon the number of the licensee attaching the stamp and the date of cancellation.

Section 34. On and after July 1, 1935, it shall be unlawful for any person holding an on- or off-sale distilled spirits license issued under this Act, or an on-sale license for liquor other than beer or wine issued under the State Liquor Control Act to have upon the premises for which any such license is issued any distilled spirits unless the stamps required by this Act to be attached to the packages of such distilled spirits are so attached to said packages and canceled as herein required or unless such distilled spirits are still in the original cases in which such distilled spirits were purchased from the manufacturer, rectifier, importer or wholesaler, and such cases have not been opened since delivery to the premises for which such on- or off-sale licenses are issued.

On and after July 1, 1935, it shall be unlawful for any person holding an off-sale distilled spirits license issued under the Act to sell under such license any distilled spirits unless the stamps required by this Act to be attached to the packages of such distilled spirits are so attached to said packages, and canceled as herein required.

On and after July 1, 1935, it shall be unlawful for any person holding an on-sale distilled spirits license issued under this Act or an on-sale license for liquor other than beer and wine issued under the State Liquor Control Act to serve or remove any distilled spirits from any packages at the premises for which such licenses are issued unless the stamps required by this Act to be attached to the packages are so attached to said packages and canceled as herein required.

On and after July 1, 1935, it shall be unlawful for any person to deliver to any premises, for which an on- or off-sale distilled spirits license is issued under this Act or for which an on-sale license for liquor other than beer or wine is issued under the State Liquor Control Act, any distilled spirits unless the containers of such distilled spirits bear a label or labels plainly indicating the quantity and proof strength of the contents of such containers and the name of the manufacturer or distributor thereof.

On and after July 1, 1935, it shall be unlawful for any manufacturer, rectifier, importer or wholesaler of distilled spirits to deliver to any premises for which an on- or off-

sale distilled spirits license is issued under this Act or an on-sale license for liquor other than beer or wine is issued under the State Liquor Control Act, and it shall be unlawful for any such on- or off-sale licensee to sell at the premises for which any such license is issued distilled spirits in packages containing more than one gallon.

Any person violating the provisions of this section shall be guilty of a misdemeanor.

The board may seize and summarily destroy any distilled spirits found upon any premises in violation of this section.

Section 35. It shall be unlawful for any person other than the board or its duly authorized agents or the holder of a valid distilled spirits manufacturer's license, rectifier's license, distilled spirits and wine importer's license or distilled spirits wholesaler's license issued under this Act or the State Liquor Control Act to sell or give away any stamps issued by the board pursuant to the provisions of this Act unless such stamps are attached to packages of distilled spirits as herein required. Any person violating the provisions of this Section shall be guilty of a misdemeanor.

Section 36. Every person who makes, sells, or uses any false or counterfeit stamp or die for printing or making stamps which is in imitation of or purports to be a lawful stamp, or die of the kind before mentioned in this Act, or who procures the same to be done, and every person who shall remove or cause to be removed, from any package of distilled spirits any stamp denoting the tax thereon, with intent to reuse such stamp, or who with intent to defraud the State, knowingly uses, or permits to be used any stamp removed from another package, or receives, buys, sells, gives away, or has in his possession, any stamp so removed, or makes any fraudulent use of any stamp for distilled spirits, shall be guilty of a felony and shall be fined not less than one hundred dollars nor more than one thousand dollars, and imprisoned not less than six months nor more than three years in the State prison.

Section 37. All moneys collected as license fees and under the excise tax provisions of this Act shall be deposited

in the State treasury to the credit of the alcohol beverage control fund, which fund is hereby created. Moneys in said fund are hereby appropriated as follows:

1. Six hundred thousand dollars for expenditure by the board in carrying out the provisions of this Act for collecting the excise taxes levied by this Act;

2. Twelve thousand dollars, or so much thereof as may be necessary, for expenditure by the Controller in carrying out the provisions of this Act requiring the collection of excise taxes;

3. Sixty thousand dollars to be used by the State Department of Public Health for enforcement work directed toward preventing the manufacture, sale or transportation of adulterated, misbranded or mislabeled alcoholic beverages;

4. One million four hundred thousand dollars to pay the salaries and expenses of auditors, inspectors and clerks employed by the board and to defray the necessary expenses arising by reason of the administration and enforcement of the provisions of this Act;

5. Ten thousand dollars for expenditure by the State Department of Finance in auditing the revenues and expenditures resulting from the provisions of this Act;

6. Fifty per cent of all moneys collected yearly from fees, to be paid to the counties, cities and counties, and cities of this State in the proportion that the amount of the fees collected in the particular county, city and county, or city bears to the total amount so collected throughout the State, and the State Controller shall, on or before March 31 of the year following that in which such moneys were collected, draw his warrants upon said fund in favor of the treasurer of each county, city and county, and city for the amount to which each is entitled hereunder;

7. The expenditures authorized by subdivisions 1, 2, 3, 4 and 5 of this section shall be made exclusively from the remaining fifty per cent of moneys collected from fees and no part thereof from the fifty per cent of fees payable to

counties, cities and counties, and cities under the provisions of subdivision 5 of this section.

8. Such amount as is necessary for the allowance of the refunds provided for in this Act;

9. Any remaining balance to be transferred to the general fund on the order of the Controller approved by the board.

The moneys to be used by the State Department of Public Health for enforcement work shall be expended as provided in "An Act preventing the manufacture, sale or transportation of adulterated, mislabeled or misbranded food, liquor and drugs, and making an appropriation," approved March 11, 1907. The Director of Public Health shall communicate to the State Board of Equalization any findings which indicate that such Act has been violated by any holder of a license under this Act.

Section 38. The board shall administer all of the provisions of this Act and to that end shall prescribe all necessary rules and regulations to carry out such provisions. The board shall have the power to require any report from any licensee, or transportation companies, and to make any examination of the books and records of any licensee it may deem necessary to perform its duties under this Act, and for the performance of its duties shall have all the powers conferred upon it by Section 3692 of the Political Code.

The members of the board and the persons employed by the board for the enforcement of the provisions of this Act shall have the power to administer and certify oaths, and shall have all the powers of peace officers in administering the provisions of this Act.

The board and persons employed by it for the enforcement of this Act shall at all times have the right to visit and inspect any portion of any premises for which licenses are issued under this Act or under the State Liquor Control Act.

Section 39. A written report of a member of the board or of an employee of the board engaged in the enforce-

ment of this Act disclosing that an applicant for a license or the premises for which a license is applied are not qualified for a license under this Act shall constitute grounds for the denial of an application for a license.

Immediately upon the denial of any application for a license the board shall notify the applicant thereof in writing. Within ten days after mailing the notice the applicant may present his written petition for a license to the board.

Upon receipt by the board of a petition for a license in proper form it shall be referred to a representative of the board for hearing.

Protests may be made to the board at any time prior to the issuance of a license against either the original issuance of a license or the renewal of a license.

Protests must be in writing and filed in the main office of the board at Sacramento, and must state one or more grounds which would authorize the board, to deny or refuse the issuance of the license. The original copy of the protest must be verified unless made by public officers acting in their official capacity.

Upon receipt by the board of a protest in proper form it shall be referred to a representative of the board for hearing.

If a license has been issued to the applicant before receipt of the protest by the board, the protest shall be considered as a complaint against the licensee and a hearing had thereon as if a complaint had been filed.

Section 40. Complaints may be made to the board by any person against any licensee. Complaints must be in writing and must state one or more grounds which would authorize the board to suspend or revoke the license or licenses of the licensee against whom the complaint is made.

A written report of a member of the board or of an employee of the board engaged in the enforcement of this Act, or of a public officer disclosing grounds for the suspension or revocation of the license or licenses of any licensee shall be deemed a complaint against the licensee within the meaning of this Act, even though not in the form of a complaint.

The original copy of complaints must be verified unless made by public officers acting in their official capacity or by employees of the board engaged in the enforcement of this Act.

The following are the grounds which constitute a basis for the suspension or the revocation of licenses:

(a) The violation or the causing or the permitting of a violation of this Act or of the rules and regulations of the board by any licensee.

(b) The misrepresentation of a material fact by any applicant in obtaining any license hereunder.

Section 41. Upon receipt by a representative of the board of a protest, a complaint or a petition for a license, the representative shall forthwith cause written notice of the time and place of the hearing of said protest, complaint or petition for a license to be given to the protesting or complaining party as well as the applicant, licensee or petitioner. The hearing shall be set for a date not more than fifteen days nor less than five days subsequent to the mailing of the notice and shall be held in the county seat of the county in which the premises of the applicant or licensee are located.

Enclosed with a copy of the notice of the time and place of hearing sent to the applicant or licensee shall be a copy of the protest or complaint as filed with the board.

The failure of an applicant for a license or a licensee to appear before the representative of the board at the time set for the hearing, except for the intervention of an act of God, shall be deemed an admission by him of the facts or acts charged in the protest or complaint and thereupon the representative of the board shall have the power to act as if the facts charged in the protest or complaint were found to be true.

The board or any member thereof or any representative appointed by the board to conduct hearings shall have the power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the

production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the State.

Each witness who shall appear, by order of the board or member thereof or a representative appointed by it, shall be entitled to receive, if demanded, for each attendance the same fees and mileage allowed by law to witnesses in civil cases in the superior court, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the board or the representative. When any witness who has not been required to attend at the request of any party is subpoenaed by the board, or a member thereof or a representative of the board, his fees and mileage may be paid from the funds appropriated for the use of the board in the administration of this Act in the same manner as other expenses of the board are paid in the administration of this Act.

The superior court in and for the county, or city and county in which any inquiry, investigation, hearing or proceeding may be held by the board or a representative appointed by it shall have the power to compel the attendance of witnesses, the giving of testimony and the production of papers, including books, accounts and documents as required by any subpoena issued by the board or any member thereof or a representative appointed by the board.

The board or any representative appointed by it, before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the superior court, in and for the county, or city and county, in which the proceeding or hearing is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witness, or the production of said papers, and that the witness has been subpoenaed in the manner prescribed in this Act, and that the witness has failed and refused to attend or produce the papers required by the subpoena, or has refused to answer questions propounded to him in the course of such proceeding or hearing, and ask an order of said court, compelling the

witness to attend or testify or produce said papers before the board or representative. The court, upon the petition of the board or any member thereof or a representative appointed by the board, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause why he did not attend and testify or produce said papers before the board or representative of the board. A copy of said order shall be personally served upon said witness, and service shall not be made by registered mail as otherwise provided in this Act.

If it shall appear to the court that said subpoena was regularly issued by the board or member thereof or a representative of the board and the witness was legally bound to comply therewith, the court shall thereupon enter an order that said witness shall appear before the board or representative at a time and place to be fixed in such order, and testify or produce the required papers, and upon failing to obey such order said witness shall be dealt with as for contempt of court.

Section 42. All hearings and investigations before the board or any representative appointed thereby shall be governed by this Act and other applicable provisions of law not inconsistent herewith and in the conduct of said hearing neither the board nor any representative appointed by it shall be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in such manner through oral testimony and printed records as is best calculated to extend the substantial rights of the parties and carry out jointly the spirit and provisions of this Act.

The board, or any member of the board or any representative appointed by it, or any party to the action or proceeding may, in any investigation or hearing before the board or a representative thereof cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in the superior court of this State, and to that end may compel the attendance of witnesses and the production

of books, documents, papers and accounts; provided that depositions taken outside of the State may be taken before any officer authorized to administer oaths.

Section 43. Within ten days after the hearing the representative of the board shall certify to the board his findings of ultimate fact whether the protest, complaint or petition is true or not, and in the case of hearings on complaints the representative may make recommendations in respect to the suspending or revoking of licenses. The findings and recommendations of the representative shall not be open to public inspection, either to the applicant, licensee, protestant, complainant or any other person.

Section 44. After the findings of the representative of the board are filed, the board shall make its decision upon the petition for a license, protest or complaint, and shall notify the petitioner, protestant, complainant, and licensee thereof. Within ten days after the mailing of the notice, the petitioner, protestant, complainant or licensee may petition the board for a reconsideration of the cause. Such petitions shall be verified unless filed by a public officer acting in his official capacity.

Section 45. Within thirty days after receipt by the board of a petition for reconsideration the board shall itself rehear the entire matter de novo and shall thereupon and within said thirty days either affirm, modify or set aside its original order.

Section 46. The action of the board upon a petition for a license, a protest, complaint, or a petition for reconsideration shall be subject to review by any court of competent jurisdiction.

Section 47. The filing of a petition for reconsideration with the board shall not be a bar to any application to the courts for relief and shall not prevent a court from reviewing or setting aside the action of the board upon a petition for a license, protest or complaint.

Section 48. Service of the notices required by this Act may be made personally or by mail; if by mail service shall be made in the manner prescribed by Section 1013 of the Code of Civil Procedure.

Section 49. Common or private carriers shall transport alcoholic beverages into the State only when such alcoholic beverages are to be consigned to a licensed importer. The carrier must obtain the receipt of such importer for the alcoholic beverage so transported and delivered and, if the consignee refuses to give a receipt and show his importer's license to the carrier, the carrier shall be relieved of all responsibility for delivering said alcoholic beverage. Where the consignee is not a licensed importer the carrier shall immediately notify the board at Sacramento, giving full details as to the character of shipment, point of origin, destination, and address of the consignor and consignee and within ten days such alcoholic beverage shall be summarily forfeited to the State of California and shall be turned over to the board for sale at public auction.

Every person violating the provisions of this section shall be guilty of a misdemeanor.

Section 50. Postal authorities may refuse delivery of any shipment of alcoholic beverage originating outside of this State. Postal authorities may turn such alcoholic beverage over to the board. The beverage when received shall be summarily forfeited to the State, to be sold at public auction by the board. Every person violating the provisions of this section shall be guilty of a misdemeanor.

Section 51. It shall be unlawful for any licensee to have upon any premises for which licenses have been issued to such licensee any alcoholic beverages other than the alcoholic beverages which such licensee is authorized to sell at such premises under the license or licenses issued therefor.

It shall be presumed that all alcoholic beverages found or located upon premises for which licenses have been issued belong to the person or persons to whom such licenses were issued.

Every person violating the provisions of this Section shall be guilty of a misdemeanor. The board or its representatives may either seize and summarily destroy or may seize and sell at public auction any alcoholic beverages found upon any premises in violation of this section.

The board shall also have the power to seize and summarily destroy or sell at public auction the following alcoholic beverages;

1. Alcoholic beverages manufactured in this State by any person other than a licensed manufacturer, regardless of where found;

2. Beer and wine upon the sale of which the excise tax imposed by this Act has not been paid, regardless of where found;

3. Distilled spirits except (a) distilled spirits located upon premises for which licenses authorizing the sale of such distilled spirits have been issued; (b) distilled spirits consigned to and in the course of transportation to a licensee holding licenses authorizing the sale of such distilled spirits; (c) distilled spirits the containers of which bear the stamps herein required to be attached thereto; (d) distilled spirits in United States government bonded warehouses.

Section 52. Every person who sells, serves or otherwise disposes of any alcoholic beverage, except beer which may be so sold, served, or disposed of, over or at any public bar or in any public barroom, for consumption on the premises, shall be guilty of a misdemeanor.

Section 53. Any person who fails, neglects or refuses to file any report required to be filed by this Act within ten days after the report is required to be filed, or who makes any false statement or conceals any material fact in any application for a license or in any record, report, affidavit or claim provided for herein, shall be guilty of a misdemeanor unless such act is by any other law of this State declared to be a felony, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars

nor more than one thousand dollars, or by imprisonment in the county jail not less than one month, nor more than six months, or by both such fine and imprisonment.

Section 54. No manufacturer, rectifier, distiller, bottler, importer or wholesaler or any officer, director or agent of any such person shall

(a) Hold the ownership, directly or indirectly, of any interest in any "on-sale" license;

(b) Furnish, give or lend any money or other thing of value, directly or indirectly, to, nor guarantee the repayment of any loan or the fulfillment of any financial obligation of, any person engaged in operating, owning or maintaining any "on-sale" premises where alcoholic beverages are sold for consumption on such premises;

(c) Furnish, give, rent, lend or sell, directly or indirectly, any equipment, fixtures or supplies, other than alcoholic beverage directly or indirectly to any person engaged in operating, owning or maintaining any "on-sale" premises where alcoholic beverages are sold for consumption on such premises, provided that this subdivision shall apply only to manufacturers, bottlers, importers or wholesalers of products of the brewing industry;

(d) Furnish, give, lend or rent directly or indirectly to any person any decorations, paintings or signs other than signs for interior use of not to exceed in area six hundred thirty square inches for use in or about or in connection with any premises where alcoholic beverages are sold for consumption on such premises, or pay money or any thing of value for the privilege of placing or painting a sign or advertisement, or window display on or in any premises selling alcoholic beverages at retail;

(e) Own any interest, directly or indirectly, in the business, furniture, fixtures, signs, except signs for interior use mentioned in subdivision (d) herein refrigeration, equipment or lease in or of any premises operated or maintained under any "on-sale" license for the sale of alcoholic beverages for consumption on the premises where sold; or

own any interest directly or indirectly, in realty hereafter acquired upon which such "on-sale" premises are maintained unless the holding of such interest is permitted in accordance with regulations of the board.

Any person violating any provision of this section shall be guilty of a misdemeanor and any holder of any retail "on-sale" or retail "off-sale" license who shall solicit the violation of the provisions of this section or accept or permit to be accepted on his behalf and with his consent any of the prohibited matters, articles or acts herein designated shall be guilty of a misdemeanor; provided, however, that the provisions of this section shall not apply to any equipment, fixtures or supplies furnished, given, lent or sold prior to the passage of this Act so long as such equipment, fixtures or supplies remain in the premises in which installed prior to such time, nor shall the provisions of this Act apply to carbonic acid gas or tapping accessories if sold at the reasonable open market value and the aggregate cost of tapping accessories furnished to any one person does not exceed $5.00 in any one calendar year.

Section 55. No sign or signs, which in whole or in part advertise any alcoholic beverage, and exceed in area seven hundred twenty square inches and no sign using the words "bar," "barroom," "saloon," "cocktail bar" or "lounge," or words of like or similar import, shall be maintained, erected, used or placed upon or adjacent to the outside of any building and in connection with any premises therein licensed to sell alcoholic beverages at retail for consumption on such premises.

Signs or other advertising matter used in connection with the licensed premises of any retailer of alcoholic beverages shall not be of any obnoxious, gaudy, blatant or offensive nature and shall in no manner contrary to the rules or regulations of said board obstruct the view of the interior of the premises from the street.

Each and every holder of an "on-sale" retail license who shall give, sell or otherwise dispense any draught beer, shall, upon the faucet, spigot or outlet wherefrom such beer is drawn, attach and keep posted a clear and legible notice,

placard or marker which shall in the English language indicate and declare the name or brand adopted by the manufacturer of such draught beer so given, sold or dispensed by such licensee, and which notice, placard or marker shall be so situated as to be clearly legible for a distance of at least ten (10) feet from such spigot, faucet or outlet to a person with normal vision, and such notice, sign or placard shall at all times be so situated as to be so clearly legible from the place where such "on-sale" licensee serves any customer or consumer of such beer, and provided further that if such faucet, spigot or other drawing device is in a location not within the room of the place of service and consumption of such beer, then, and in that event there shall also be kept posted a similar notice, placard or marker in the place of service and consumption of such beer which shall truthfully state and indicate only the kinds and brands of draught beer actually on sale in the premises of the "on-sale" licensee.

Any person who shall violate any of the provisions of this section, or who shall substitute another or different brand of draught beer from that indicated by any of the notices, placards or markers hereinabove provided for; or who shall substitute one brand of beer for another, or misrepresent the brand or kind of beer served to a consumer, shall be guilty of a misdemeanor for such violation or noncompliance. Any person who sells or otherwise disposes of, except for export, any draught beer containing more than three and two-tenths per cent of alcohol by weight and any person who sells or otherwise disposes of, except for export, any bottled beer containing more than four per cent of alcohol by weight, shall be guilty of a misdemeanor; provided, that this limitation shall not apply to the sale of ale, porter, brown and stout in bottles bearing labels properly describing the contents under any licenses, other than on-sale beer licenses, issued under this act or the State Liquor Control Act.

Section 56. Every person who employs or uses the services of minors in or on that portion of any premises which are used for the sale and service of alcoholic bever-

ages for consumption on the premises shall be guilty of a misdemeanor.

Section 57. It shall be unlawful for any person to pay or agree to pay any hostess, waitress, entertainer or other person a percentage of the receipts from sales of alcoholic beverages solicited or made by such hostess, waitress, entertainer or other person a salary or remuneration the amount of which is in any way dependent upon the amount or number of sales of alcoholic beverages solicited or made by such hostess, waitress, entertainer or other person. Provided, that this section shall not prohibit the holders of manufacturer's, rectifier's or wholesaler's licenses from employing and paying salesmen engaged in selling or soliciting sales for alcoholic beverages on a commission basis.

Every person who violates the provisions of this section shall be guilty of a misdemeanor.

Section 58. Every person who keeps or permits to be used or suffers to be used any disorderly house or place in which people abide or to which people resort, to the disturbance of the neighborhood, or in which people abide or to which people resort for purposes which are injurious to the public morals, health, convenience or safety shall be guilty of a misdemeanor.

Section 59. Every on- or off-sale licensee who sells, gives away or furnishes any alcoholic beverage in any election district or precinct in any county in the State where an election is in progress, during the hours when by law the polls are required to be kept open for voting shall be guilty of a misdemeanor.

Section 60. Except as otherwise provided in this section, no person licensed to manufacture, import or wholesale any alcoholic beverage shall deliver or cause to be delivered any beer to or for any person holding an on-sale or off-sale license except between the hours of six a.m. and eight p.m. and no such delivery of any alcoholic beverage shall be made or caused to be made by any such licensee on

Sunday. Alcoholic beverages may be delivered at the platform of the manufacturing or distributing plant at any time. Every person violating the provisions of this section shall be guilty of a misdemeanor.

Section 61. Every person who sells, furnishes, gives, or causes to be sold, furnished or given away any alcoholic beverage to any person under the age of twenty-one years shall be guilty of a misdemeanor; provided, that this section shall not apply to the parents or guardians of such persons under twenty-one years of age.

Section 62. Every person who sells, furnishes, gives or causes to be sold, furnished or given away, any alcoholic beverage to any habitual or common drunkard shall be guilty of a misdemeanor.

Section 63. Every person, not authorized by law, who brings into any State prison, town or county jail, or city and county jail, or reformatory in this State or within the grounds belonging to any such institution any alcoholic beverage of any kind whatsoever shall be guilty of a felony.

Section 64. Every person who sells, gives or delivers to any other person any alcoholic beverage at any public schoolhouse or upon any portion of the grounds thereof shall be guilty of a misdemeanor. Any person convicted of a violation of this section shall, in addition to the penalty imposed for the misdemeanor, be barred from having or receiving any privilege of the use of public school property which is accorded by Chapter II of Part III of Division VI of the School Code of this State.

Section 65. Every person convicted of a misdemeanor for a violation of any of the provisions of this Act for which another punishment is not specifically provided for herein, shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

All fines and forfeitures imposed for a violation of this Act and collected in any court, except police courts, city justices' courts, city courts, and recorders' courts of cities or towns, must be paid to the county treasurer of the county in which the court is held; provided, that all fines and forfeitures collected in any police court, city justice's court, city court, or recorder's court, of any city or town that is maintained and the salaries of the officers thereof paid by the city shall be paid to the city treasurer of the city in which such court is located, excepting, however, all forfeitures collected by the judge of any of said courts when sitting as a committing magistrate.

Section 66. Every person convicted of a felony for a violation of any of the provisions of this Act for which another punishment is not specifically provided for herein, shall be punished by a fine of not more than five thousand dollars or by imprisonment in the State penitentiary for not less than one year nor more than five years or by both such fine and imprisonment.

Section 67. It is hereby declared that this Act shall not apply to the manufacture, sale or use of completely denatured ethyl alcohol or special denatured ethyl alcohol, as these substances are defined in the various statutes and regulations of the United States government relating thereto.

Nothing in this Act shall be deemed to prevent or restrict the use of tax-free ethyl alcohol under regulation of the Treasury Department of the United States government by any governmental agency, State or Federal, or any scientific university or college of learning or any laboratory for use exclusively in scientific research or to any hospital or sanitarium.

Nothing in this Act shall be deemed to prevent or restrict the use of tax-free alcohol or of industrial alcohol or other distilled spirits or wine under regulation of the United States government in the manufacture of medicinal pharmaceutical, or antiseptic products, including prescriptions compounded by retail druggists; of toilet products,

of flavoring extracts, sirups, of food products, of scientific, chemical, or industrial products; provided such products are unfit for beverage use.

Section 68. The State Liquor Control Act, Chapter 658, Statutes of 1933, and Chapter 178, Statutes of 1933, shall remain in effect until July 1, 1935, after which date said acts shall no longer be of any force and effect; provided, that any taxes imposed pursuant to Chapter 178, Statutes of 1933, prior to said date shall remain fully collectible.

Section 69. The following acts and sections, together with all amendments thereof and all acts supplementary thereto, are repealed.

Year	Chapter	Page	Year	Chapter	Page
1855	188	240	1895	156	161
1858	232	193	1903	240	319
1860	223	186	1905	26	20
1871-72	188	231	1905	123	126
1873-74	13	12	1907	104	127
1873-74	27	27	1909	413	722
1873-74	198	297	1911	351	599
1873-74	300	434	1915	21	20
1873-74	345	509	1921	80	79
1875-76	473	691	1925	89	221
1880	83	80	1933	51	340
1889	241	352	1933	149	598
1891	87	91			

Penal Code Sections.

63b 397b 680

Political Code Sections.

3381
3383

School Code Sections.

3.80
3.81

Section 70. If any section, subsection, clause, sentence or phrase of this Act which is reasonably separable from

the remaining portion of this Act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this Act. The Legislature hereby declares that it would have passed the remaining portions of this Act, irrespective of the fact that any such section, subsection, clause, sentence or phrase of this Act be declared unconstitutional.

Section 71. This Act, inasmuch as it provides for tax levies for the usual current expenses of the State, shall, under the provisions of Section 1 of Article IV of the Constitution, take effect immediately.

Approved, June 13, 1935.

APPENDIX B

I. FORM OF WEBB-KENYON ACT AS ORIGINALLY PROPOSED.

Senate Bill 4043 (62nd Cong., 3rd Sess.), the original Bill introduced in the Senate embracing the subject dealt with in the Webb-Kenyon Act, was first before the Senate for debate on December 16, 1912. In introducing the Bill for debate it was said:

Mr. Sanders. Mr. President, Senate bill 4043, entitled "A bill to prohibit interstate commerce in intoxicating liquors in certain cases," stripped of its verbiage would read:

> *Be it Enacted,* That the shipment of intoxicating liquor from one State into any other State by any person, to be received or used in violation of any law of such State, is hereby prohibited.
>
> Sec. 2. That all intoxicating liquors transported into any State shall, upon arrival within the boundaries of such State and before delivery to the consignee, be subject to the operation of the laws of such State.

This bill relates to nothing but the shipment of intoxicating liquors from one State into another State where it is to be sold in violation of State laws concerning same.

(Volume 49, Congressional Record, page 699)

II. DEBATES STRESSING OBJECT OF BILL AS AN AID TO STATES IN EXERCISE OF POLICE POWER.

Senator Kenyon's Views on Object and Effect of Bill.

Mr. Kenyon. Now, I think no lawyer who is honest with himself and perfectly frank will deny that there are very close constitutional questions involved in this bill, and especially as to section 2. Every forward measure must run the gauntlet of constitutional objection.

The evil which this bill seeks to strike at is apparent, and the purpose, it seems to me, is commendable. *In its ultimate analysis the bill is simply to permit the States to exercise their reserved police power without interference by the Federal Government; in other words, to subject interstate commerce in certain articles to the laws of the several States.* (Italics ours.) This Government is one of delegated powers. It has been asserted by constitutional writers of great eminence that one of the incentive reasons for the adoption of the Constitution was to give free channels to commerce and not permit the States by various regulations to block commerce.

The power of the State in its reserved police power is one which Congress does not give and is one which Congress can not take away. It can not add one particle to or detract one iota from the police power of the States. These powers belong to the States; the right to make such laws concerning the health, life, and safety of its citizens as its legislative power in its wisdom may determine. This is just as much a right in the State as the constitutional right to regulate commerce is in Congress. The "police power zone" of the State, if such an expression might be used, may at times lap over and intrude upon the "interstate commerce zone" of the Federal Government. If such conflict ever does arise, the Federal Government, of course, is supreme.

This bill if enacted would not be a law to bring about prohibition. It would not be a law to stop personal use of intoxicating liquors, nor to prohibit the shipment of intoxicating liquors for personal use, nor to stop the use of intoxicating liquors for sacramental purposes. *Its purpose, and its only purpose, is to remove the impediment existing as to the States in the exercise of their police powers regarding the traffic or control of intoxicating liquors within their borders.*

It is the spirit of our times and the genius of our institutions that each State should exercise its police power free from the impediments that might spring from a narrow construction of the interstate commerce clause. Where a State has determined that intoxicating liquors shall not be

manufactured or sold within its borders, is it not manifest that the citizens of other States should not be granted greater privileges in that State than its own citizenship enjoy? (Italics ours.)

(Volume 49, Congressional Record, page 707)

Mr. Sherley's views.

Mr. Sherley. Man after man has stood on the floor here saying, "This bill is simply to give to the State additional power of control." I say to you that whatever power a State has over any subject within its domain is not because of the Constitution of the United States, and no act of Congress can grant any power to it that it does not already have. We live under a government of delegated powers. Certain powers have been delegated to the States, certain to the Nation, and certain reserved to the people, and delegated neither to the State nor to the Nation. The power that the Federal Government has over interstate commerce is plenary. It is absolute within the limits of the Constitution, and Congress can not by all the declarations under the sun convey to any single State the slightest power that that State does not now have.

(Volume 49, Congressional Record, page 2841)

Mr. Mondell's views.

Mr. Mondell. What the legislation does is to subject certain articles in interstate commerce to the police power of the State in order that the State authorities may determine whether they are to be received, possessed, sold, or in any manner used in violation of the law of the State.

(Volume 49, Congressional Record, page 2837)

Mr. Houston's views.

Mr. Houston. It is but aiding local option, with the State as the unit, and I think that all agree that the control of the liquor traffic belongs to the States and that the State in its exercise of its police power in local self-government should be aided as much as it is possible for Congress to aid it.

(Volume 49, Congressional Record, page 2824)

Mr. Paynter's views.

Mr. Paynter. Therefore, Mr. President, when it is stated in the bill under consideration (or the Wilson bill) that an article at a certain time shall be subject to the police power of a State the Congress can not thereby add to the police power of the State. Such a statement, if viewed from a Constitutional aspect, can not extend the police power of the State. It would be more accurate, I think, if Congress should say that the interstate shipment was terminated upon delivery of the article. Then there would be no reference made to the police power of the State and would not appear by words that Congress was endeavoring to add to the police power of the State. This would be better, as Congress can neither confer upon or diminish the police power of the State. In my opinion it is very inaccurate to make a declaration that at a certain period it shall be within the police power of the State, *because when the shipment is terminated the police power of the State takes hold and control of the article that is shipped.* (Italics ours.) So, as I say, it is very misleading to make a statement of that kind in the bill. It is not constitutionally accurate. It is not the province of Congress to define the police power of the States. It is the province of Congress to make uniform rules to regulate commerce; not, however, to confer such power upon the States.

(Volume 49, Congressional Record, pages 2689, 2690)

III. DEBATE RELATING TO CONSTITUTIONALITY OF SECOND SECTION AND REASONS FOR ITS ELIMINATION.

Views on Constitutionality of Second Section.

Senator McCumber. I had stated, if the Senator will pardon me, when he first called my attention to it, that I doubted the constitutionality of section 2 and that I did not see the necessity of it. It was no part of the bill when it was introduced, but is a committee amendment. I think it is rather dangerous than beneficial. It may be open to

the construction that it is a delegation of congressional authority.

(Volume 49, Congressional Record, pages 702-3).

Senator Kenyon's views.

Senator Kenyon. The real difficulty with section 2 is this: The section recognizes the transportation of liquors into the State and then permits the operations of the police power that might stop the liquor at the State line, thus keeping it out of interstate commerce. The first section takes certain liquor out of commerce and the second section seems to recognize it as being in. There is some incongruity in this. That is the proposition on which I have had great difficulty in harmonizing my views.

(Volume 49, Congressional Record, page 830)

Mr. Paynter's views.

Mr. Paynter. Section 2 is inconsistent with section 1, as this section allows intoxicating liquor to be seized upon arrival in a State, regardless of the question of intent of those who had a direct or indirect interest in it.

(Volume 49, Congressional Record, pages 2687, 2688)

Mr. Borah's views.

Mr. Borah. My object in the first place was to discuss principally the second section of the bill. I do not believe the second section of the bill is constitutional. I believe it establishes a different rule and involves a different principle from that which is involved in the first section, and it was my purpose to state why I entertain that view. I shall not do so, however, in view of the fact that I understand the parties in charge of the bill are going to offer as a substitute for this bill the one that passed the house known as the Webb bill, and which is in effect the first section of this bill.

Assuming that probably the substitute will prevail, I am not going to take time to state why it seems to me the second section is inhibited by the provisions of the Constitution. I could not and shall not vote for this section

in any event—entertaining the view which I do as to its unconstitutionality.

(Volume 49, Congressional Record, page 2919)

Mr. Kenyon's views.

Mr. Kenyon. Mr. President, a bill was passed in the House known as the Webb bill. An attempt has been made to substitute that bill to-day for what is commonly known as the Kenyon-Sheppard bill. That has not been successful, but a motion will be made by the Senator from New Hampshire [Mr. Gallinger] to strike out all after the enacting clause and insert in lieu thereof the words of the Webb bill. I very much hope that that motion may prevail.

(Volume 49, Congressional Record, page 2920)

IV. DEBATE EVIDENCING DIVERGENCE OF VIEWS IN RESPECT TO CONSTITUTIONALITY OF BILL.

Mr. Kenyon's Views.

Mr. Kenyon. Senator Nelson, of Minnesota, in his report some years ago to Congress on this question, stated that matter from that standpoint so clearly that I use his language. He said:

> Under the Wilson law the Federal Government relinquished a portion of its control over interstate commerce, and under the proposed legislation it proposes to relinquish an additional portion. In neither case is there a delegation to the State; in both cases it amounts merely to a declaration on the part of Congress that interstate commerce in intoxicating liquors shall only be free to the extent that it does not interfere with or embarrass the police power of the state. * * *

Mr. Sutherland's Views.

Mr. Sutherland. Interstate transportation, as I understand, begins when the article is delivered by the consignor.

in the State from which it is shipped and ends, and only ends, when it is delivered to the consignee in the State to which it is shipped. Now, if Congress may divest an article of its interstate character and surrender to the State the power to regulate it and deal with it as it pleases immediately after it has crossed the line of the State in which it is shipped, may it not, by the same reasoning, surrender the power to the State from which the article is shipped until the time it reaches the State line? If that be true, would it not result in Congress surrendering to the two States the whole power of interstate commerce?

Mr. Nelson's Views.

Mr. Nelson. The Senator from Utah (Mr. Sutherland) fails to state the entire proposition in its integrity. The Supreme Court, in the case of Leisy against Hardin, held that interstate commerce extended until the consignee had disposed of the goods in the original package; and in the case of Rahrer, under the Wilson law, the Supreme Court held that Congress had relinquished its power over a part of interstate commerce, to wit, the sale of the unbroken package.

In that case the Supreme Court held that it was not a delegation of legislative authority, but that under the terms of the Wilson law the goods had not arrived within the State until delivery to the consignee. In the case of Leisy against Hardin the Supreme Court decided that the sale by the consignee in the unbroken package to the retail trade was a part of interstate commerce, and just as much subject to the protection of Congress as the transit by rail to the point of destination. In that case Congress chopped off a part of interstate commerce; it chopped off the sale in the unbroken package; and in section 2 of this bill it is simply proposed to go a step further. So that the question propounded by the Senator from Utah did not cover the whole case; it did not cover one part of interstate commerce that was eliminated by the Wilson law.

Mr. Sutherland. Let it cover that element, then, and then does the Senator from Minnesota say that Congress

has the power to surrender to the State in which the shipment originates the power to regulate it until it reaches the State line?

Mr. Nelson. There was a surrender in that case of a part of interstate commerce, and there is no reason why Congress can not surrender another portion. The question of the delegation of legislative authority was discussed by the court in the *Rahrer* case, and the court held that there was no delegation of legislative authority.

* * * * * * * * *

Mr. McCumber. I think the Senator agrees with me that the only way we can sustain the constitutionality of section 2 is on the assumption that Congress has divested the article of its interstate character the moment that it crosses the line. Do I correctly understand that to be the Senator's position?

Mr. Kenyon. I agree with the Senator from Minnesota that a strong argument can be made under the *Rahrer* case, and in the language of the court in the *Leisy* case, that the interstate feature may be removed some time in the journey.

Mr. McCumber. That is correct.

Mr. Kenyon. I do not myself so argue.

Mr. McCumber. That is correct; but it must be in the act itself which divests it of its interstate character.

Mr. Kenyon. That is done by section 1.

Mr. McCumber. I have no doubt of the authority of Congress to divest it of its interstate character.

Mr. Kenyon. I have no doubt of that.

Mr. McCumber. But as section 2 now appears is it not open to the possibility, at least, of a construction that it is not a delegation of authority and that there is no attempt to really divest it of its interstate character; and could we not cure that by a simple amendment, such as was suggested by Senator Edmunds in the argument which you have just read, by a clear and definite declaration that it shall cease to be an object of interstate commerce the moment it crosses the State line? With that declaration, I believe that the constitutionality of it may properly be sustained. * * * (Vol. 49, Congressional Record, pp. 829, 830.)

APPENDIX C

PRESIDENT TAFT'S VETO MESSAGE.

To the Senate:

I return herewith, without my signature, S. 4043.

The bill, including title and enacting clause, is as follows:

An Act divesting intoxicating liquors of their interstate character in certain cases.

> *Be It Enacted,* etc., That the shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory, or District of the United States, or place noncontiguous to, but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to, but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to, but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package, or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to, but subject to the jurisdiction thereof, is hereby prohibited.

After giving this proposed enactment full consideration, I believe it to be a violation of the interstate commerce clause of the Constitution, in that it is in substance and effect a delegation by Congress to the States of the power of regulating Interstate commerce in liquors which is vested exclusively in Congress.

The most recent expression of the Supreme Court on the general subject is found in the case of the *Louisville & Nashville Railroad Co.* v. *F. W. Cook Brewing Co.* (223 U. S. 70). This was a bill in equity to enjoin the railroad company from refusing to accept the product of the brewing company at Evansville, Ind., where it was located, for transportation to local-option or so-called "dry communities" in Kentucky. In delivering the judgment of the Supreme Court, affirming the action of the circuit court in awarding the injunction asked, Mr. Justice Lurton said:

> "By a long line of decisions, beginning even prior to *Leisy* v. *Hardin* (135 U. S. 100) it has been indisputably determined:
>
> a. That beer and other intoxicating liquors are a recognized and legitimate subject of interstate commerce.
>
> b. That it is not competent for any State to forbid any common carrier to transport such articles from a consignor in one State to a consignee in another.
>
> c. That until such transportation is concluded by delivery to the consignee, such commodities do not become subject to State regulation, restraining their sale or disposition.
>
> The Wilson Act, which subjects such liquors to State regulation although still in the original packages, does not apply before actual delivery to such consignee where the shipment is interstate. Some of the many later cases in which these matters have been so determined and the Wilson Act construed are: *Rhodes* v. *Iowa* (170 U. S. 412); *Vance* v. *Vandercook Co.* (170 U. S. 438); *Heyman* v. *Southern Railway* (203 U. S. 270); *Adams Express Co.* v. *Kentucky* (214 U. S. 218).
>
> Valid as the Kentucky legislation undoubtedly was as a regulation in respect to intrastate shipments of such articles, it was most obviously never an effective enactment in so far as it undertook to

> regulate interstate shipments to dry points. Pending this very litigation, the Kentucky Court of Appeals, upon the authority of the line of cases above cited, reached the same conclusion, *C. & N. O. Ry.* v. *Kentucky* (126 Ky. 563).
>
> The obligation of the railroad company to conform to the requirements of the Kentucky law, so far as that law prohibited intrastate shipments, is clear, and to this extent its circular notification was commendable. But the duty of this company, as an interstate common carrier for hire, to receive for transportation to consignees upon its line in Kentucky from consignors in other States any commodity which is an ordinary subject of interstate commerce, and such transportation could not be prohibited by any law of the State of such consignee, inasmuch as any such law would be an unlawful regulation of interstate commerce not authorized by the police power of the State.

The Wilson Act, referred to by Judge Lurton, provides as follows:

> That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale, or storage therein shall, upon arrival in such State or Territory, be subject to the operation and effect of the laws of such State or Territory, enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

The Supreme Court, in *Rhodes* v. *Iowa* (170 U. S. 423), construed this language to mean that the legislative authority of the respective States should attach to intoxicating liquors coming into the States by an interstate shipment,

only after the consummation of the shipment, but before the sale of the merchandise. The court held that the right of the consignee to sell before delivery was a mere incident to the shipment, and that it was within the power of Congress to submit the incidental power to sell to the dominion of State authority.

The court declined to express an opinion as to the authority of Congress under its power to regulate commerce to delegate to the States the right to forbid the transportation of merchandise from one State to another. It must be admitted, therefore, that upon the exact point in question, to wit, the right of the Congress to delegate to States the power to forbid the shipment of intoxicating liquors from another State into its jurisdiction, the Supreme Court has declined to express an opinion, though it is difficult to read the language of the court in the case of *Rhodes* v. *Iowa* (170 U. S. 412); *Vance* v. *Vandercook Co.* (170 U. S. 438), and of Mr. Justice Catron in the License Cases (5 Howard, 504, 599) quoted with approval by Mr. Justice Matthews in *Bowman* v. *Railway Co.* (125 U. S. 465, 489) without inferring that such a delegation of power would be beyond the power of Congress.

One of the main purposes of the union of the States under the Constitution was to relieve the commerce between the States of the burdens which local State jealousies and purposes had in the past imposed upon it; and the interstate-commerce clause in the Constitution was one of the chief reasons for its adoption. The power was there conferred upon Congress. Now, if to the discretion of Congress is committed the question whether in interstate commerce we shall return to the old methods prevailing before the Constitution or not, it would seem to be conferring upon Congress the power to amend the Constitution by ignoring or striking out one of its most important provisions. It was certainly intended by that clause to secure uniformity in the regulation of commerce between the States. To suspend that purpose and to permit the States to exercise their old authority before they became States, to interfere with commerce between them and their neighbors, is to defeat the constitutional purpose.

This conclusion is sustained in a very careful report prepared by the subcommittee of the Judiciary Committee of the Senate, of which then Senator Knox was chairman. The conclusions stated were as follows:

> First. Interstate shipments are not completed until they reach the consignee.
>
> Second. An interruption or interference with interstate shipments before they reach the consignee constitutes a regulation of commerce.
>
> Third. Regulating interstate shipments is an exclusive function of Congress.
>
> Fourth. Congress cannot delegate any part of its exclusive power to the States.
>
> Fifth. To remove the bar or impediment of exclusive federal power which shuts the States out of the federal domain is to permit or sanction a state law in violation of the Constitution and in effect to delegate a federal function to the States.

I am quite aware that the purpose of this act is to enable the States more completely to regulate the sale and use of intoxicating liquors in their respective jurisdictions, and that a very large part of the good people of each of such States is strongly in favor of any law which will permit the State to do this, and therefore, that the necessity for maintaining the Constitutional restrictions in such cases with reference to interstate commerce is not looked upon with popular favor in those States. Recognizing this popular wish, Congress has already gone to the extent of subjecting the original package in which the liquor is imported to the laws of the State as soon as it is delivered into the hands of the consignee. It has regulated the commerce in liquors by forbidding, under sections 238, 239, and 240 of the Penal Code (1) delivery of intoxicating liquor to any person other than the consignee, unless upon his written order, or to any fictitious person; (2) the collection of the purchase price of intoxicating liquor by any common carrier acting as agent of buyer or seller; (3) the shipment of any

liquor unless labeled on the outside to show name of consignee, nature of contents, and quantity contained. These restrictions must greatly aid the State authorities in their enforcement of their liquor laws.

If Congress, however, may in addition entirely suspend the operation of the interstate-commerce clause upon a lawful subject of interstate commerce and turn the regulation of interstate commerce over to the States in respect to it, it is difficult to see how it may not suspend interstate commerce in respect to every subject of commerce wherever the police power of the State can be exercised to hinder or obstruct that commerce. I can not think that the framers of the Constitution, or that the people who adopted it, had in mind for a moment that Congress could thus nullify the operation of a clause whose useful effect was deemed so important and which in fact has contributed so much to the solidarity of the Nation and the prosperity that has followed unhampered, nation-wide trade.

But it is said that this is a question with which the Executive or Members of Congress should not burden themselves to consider or decide. It is said that it should be left to the Supreme Court to say whether this proposed Act violates the Constitution. I dissent utterly from this proposition. The oath which the Chief Executive takes, and which each Member of Congress takes, does not bind him any less sacredly to observe the Constitution than the oaths which the Justices of the Supreme Court take. It is questionable whether the doubtful constitutionality of a bill ought not to furnish a greater reason for voting against the bill, or vetoing it, than for the court to hold it to be invalid. The court will only declare a law invalid where its unconstitutionality is clear, while the law maker may very well hesitate to vote for a bill if of doubtful constitutionality because of the wisdom of keeping clearly within the fundamental law. The custom of legislators and executives having any legislative function to remit to the courts entire and ultimate responsibility as to the constitutionality of the measures which they take part in passing is an abuse which tends to put the court constantly in opposition to the legislature and executive, and, indeed, to the popular supporters of uncon-

stitutional laws. If, however, the legislators and the executives had attempted to do their duty this burden of popular disapproval would have been lifted from the courts, or at least considerably lessened.

For these reasons, and in spite of the popular approval of this bill, I have not felt justified in signing it, because I feel that under principles of proper constitutional construction it violates the interstate-commerce clause of our fundamental law.

I am sustained in the view I have taken by the judgment and opinion of Attorney General Wickersham, which contains an elaborate discussion of the question and considers in detail the issues which have been raised in the Congressional debates and elsewhere.

WM. H. TAFT

The White House, February 28, 1913.

(Volume 49, Congressional Record, page 4291)

APPENDIX D

DEBATES ON PROPOSED 21st AMENDMENT SETTING OUT MORE FULLY THE SUBJECTS CONCERNING WHICH EXCERPTS ARE QUOTED IN APPELLANT'S BRIEF.

That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several states:

"ARTICLE —

"Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

"Sec. 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

"Sec. 3. Congress shall have concurrent power to regulate or prohibit the sale of intoxicating liquors to be drunk on the premises where sold.

"Sec. 4. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress."

(76 Congressional Record, page 4139)

* * * * * * * * *

By Mr. Blaine:

"Section 1 is a straight, outright repeal of the eighteenth amendment. Section 1, if it is incorporated in

the joint resolution, submitted by the Congress, and ratified by the necessary States, will entirely eliminate the eighteenth amendment from the Constitution. I need not discuss that section.

"Then we have suggested and offered section 2, which provides as follows:

> "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors in violation of the laws thereof is hereby prohibited.

"Mr. President, in agreeing to that section I think the committee was unanimous that the language used would effectuate the purpose that is obviously designed by section 2. It is claimed, however, and I think with some degree of assurance for the future, that Congress now has the power to pass laws to protect the so-called dry States in regulation of interstate commerce over intoxicating liquors. A great many laws on that subject have been enacted.

"I will not review those laws in detail. First, however, we had what is known as the Wilson law. That law was treated in the case of *Rhodes* v. *Iowa* (170 U. S. 412); but the Supreme Court in that case gave rather a restricted construction of the language used by the Congress, and held that under the Wilson Act the interstate character attached to the liquor until it had actually been delivered to the consignee. In other words, the court held that the interstate-commerce clause—that is, the power of Congress to regulate interstate commerce—attached to that commodity not only before it entered the State but after it entered the State so long as it was in process of transportation either by rail, by express, or by any other method, until the commodity or the intoxicating liquor was in fact delivered to the consignee.

Then came an amendment to the Wilson Act, known as the Webb-Kenyon Act. The Webb-Kenyon Act was interpreted by the Supreme Court of the United States in the case of *Clark Distilling Co.* v. *Western Maryland Railway Co.* (242 U. S. 311). The language of the Webb-Kenyon Act was designed to give the State in effect power

of regulation over intoxicating liquor from the time it actually entered the confines of the State; and the Supreme Court held that it was following the doctrine laid down in the case of Rhodes against Iowa, and necessarily must follow that doctrine in order to sustain the decision it was making in the case of Clark against Maryland Railway Co.

Mr. Wagner. Mr. President, will the Senator yield?

Mr. Blaine. I see my able friend from New York shaking his head. I yield to him.

Mr. Wagner. I do not want to enter into a controversy, because it really is not very important, but I do not think the Senator meant to say that by this act Congress delegated to the States the power to regulate interstate commerce; Congress itself regulated interstate commerce to the point of removing all immunities of liquor in interstate commerce.

Mr. Blaine. I thank the Senator. I think he has given the correct statement of the doctrine. My understanding of the question was identically the same—that it was the action of the Congress of the United States in regulating intoxicating liquor that protected the dry State within the terms of the law passed by the Congress.

Then, following the Webb-Kenyon Act, was the Reed "bone dry" amendment. That went somewhat further. I need not discuss that. That amendment was sustained by the Supreme Court in the case of *United States* v. *Hill* (248 U. S. 420).

In the case of Clark against Maryland Railway Co. there was a divided opinion. There has been a divided opinion in respect to the earlier cases, and that division of opinion seems to have come down to a very late day. So, to assure the so-called dry States against the importation of intoxicating liquor into those States, it is proposed to write permanently into the Constitution a prohibition along that line.

Mr. President, the pending proposal will give the States that guarantee. When our Government was organized and the Constitution of the United States adopted, the States surrendered control over and regulation of interstate commerce. This proposal is restoring to the States,

in effect, the right to regulate commerce respecting a single commodity—namely, intoxicating liquor. In other words, the State is not surrendering any power that it possesses, but rather, by reason of this provision, in effect acquires powers that it has not at this time.

The committee felt that since the Congress had acted and had definitely legislated upon this question, while that legislation had been sustained by the Supreme Court, yet it was sustained by a divided court, and that we could well afford to guarantee to the so-called dry States the protection designed by section 2.

I am opposed to the dry States interfering with the so-called wet states in connection with this question of intoxicating liquor; and so, by the same token, I am willing to grant to the dry States full measure of protection, and thus prohibit the wet States from interfering in their internal affairs respecting the control of intoxicating liquors.

(76 Congressional Record, pages 4140, 4141)

* * * * * * * * *

Mr. Blaine. Mr. President, my own personal viewpoint upon section 3 is that it is contrary to section 2 of the resolution. I am now endeavoring to give my personal views. The purpose of section 2 is to restore to the States by constitutional amendment obsolute control in effect over interstate commerce affecting intoxicating liquors which enter the confines of the States. The State under section 2 may enact certain laws on intoxicating liquors, and section 2 at once gives such laws effect. Thus the States are granted larger power in effect and are given greater protection, while under section 3 the proposal is to take away from the States the powers that the States would have in the absence of the eighteenth amendment. My view therefore is that section 3 is inconsistent with section 2, and the two sections are incompatible, and that section 3 ought to be taken out of the resolution. I made myself clear before the subcommittee and before the full committee, and made a reservation to that effect.

(76 Congressional Record, page 4143)

* * * * * * * * *

Mr. Fess. I think the Senator has answered my question, but he goes farther than I feel free to go. In other words, the second section of the joint resolution that is now before us is designed to permit the Federal authority to assist the States that want to be dry to remain dry. I am in favor of that. The third section is intended to give authority to the Federal Government to prevent the return of the saloon to the extent of regulating or prohibiting the drinking of liquor on the premises where the sale is made. * * *

(76 Congressional Record, page 4168)

* * * * * * * * *

Mr. Walsh of Montana. I wish to say a word, in view of what has just been stated by the Senator from Florida in relation to the second paragraph of the joint resolution as tendered by the committee.

It is true that the original Constitution authorizes Congress to prohibit the transfer of intoxicating liquors in interstate commerce. It is held, however, that that authority simply indicates the intention to have commerce free except as Congress may otherwise direct. It has been held that under the existing Constitution the right obtains on the part of any citizen to pass his goods into another State, and they remain under the protection of the Federal Constitution until they actually reach the hands of the consignee; so that they can not be stopped at the State line nor there fall under the jurisdiction of the State authorities, but the goods will not fall under the jurisdiction of the State authorities until they actually get into the possession of the consignee who may live in the center of the State. Meanwhile all manner of opportunity is afforded for the diversion of the intoxicating liquors from the consignee to whom they are addressed. Likewise, even then, the intoxicating liquor is protected by the commerce clause; if it remains on the siding in the car of the transportation company, it still remains under that protection, and if it goes into a warehouse belonging to the transportation company it remains under the protection of the Federal statute, and is immune from any control by State statutes until it actually reaches the possession of the consignee. The purpose of

the provision in the resolution reported by the committee was to make the intoxicating liquor subject to the laws of the State once it passed the State line and before it gets into the hands of the consignee as well as thereafter. It was so decided in a case reported in One hundred and seventieth United States Reports, with which, I think, the profession generally is not particularly familiar.

Mr. Glass. Mr. President, in my own interpretation of the resolution as I have presented it, there can be no consignee of intoxicating liquors in a dry State. Liquors may be shipped across a State in interstate commerce from one wet State to another wet State, but the resolution as I have drafted it prohibits the shipment of intoxicating liquors into a State whose laws prohibit the manufacture, sale, or transportation of liquors. So I have met the objection that we are undertaking to interfere with interstate commerce as between States which authorize the manufacture, transportation, and sale of liquors; but there can be no consignee in dry territory under the terms of my proposed amendment to the Constitution.

Mr. President, at every point in the presidential campaign when submission of this question was discussed, and whenever the objection was raised as to the return of the saloon, assurances were given that both parties, with unexampled unanimity, were opposed to the return of the saloon. The Democratic national platform, in spirit and by suggestion—indeed, by denunciation—objected to the return of the saloon. The Republican platform in text insisted upon a constitutional guaranty against the return of the saloon. So my joint resolution complies with both the Democratic and the Republican platforms; and that is the only way you are ever going to get the question submitted at all, as it requires a two-thirds vote. Moreover, not only is it the only way you are ever going to get it submitted but it is the only way you are ever going to get it ratified by 36 States of the Union.

(76 Congressional Record, page 4219)

* * * * * * * * *

Mr. Reed. May I preface the question by saying that I am in sympathy with every word the Senator has thus far uttered on this subject.

A good many Senators are obviously bothered by the continuance of Federal control in this matter; and while they are anxious to see the saloon outlawed, they would like to see it done by prohibition on State action rather than continuing this unsuccessful Federal effort to carry its police power into the States. I am wondering whether the Senator feels that the last sentence in section 1 of his amendment is essential. That is the one which gives concurrent power to Congress.

Mr. Glass. No; I do not think it is essential. If I could be brought to believe that the joint resolution stands a better chance of passage by the elimination of that sentence, I should be glad to eliminate it, because the balance of the joint resolution gives us a constitutional prohibition against the return of the saloon.

Mr. Reed. That is just what I want to see; and the question of the Senator from Florida (Mr. Fletcher) a little while ago seemed to be animated by the same thought I had—that there are many votes that would be secured for the joint resolution if that grant of concurrent power to Congress were eliminated.

Mr. Glass. That being so, I should be perfectly willing to eliminate that one sentence from the measure. All I want is a constitutional guaranty against the return of this abominable saloon system of dispensing intoxicating liquors—that is all—and if we write it into the Constitution I assume that no State would ever even undertake to violate the text of the Constitution by licensing a saloon.

Mr. Reed. Obviously, if it did, its licensing law would be invalid.

(76 Congressional Record, page 4220)

APPENDIX E

RETALIATORY BILLS AND LAWS.

ILLINOIS.

Senate Bill No. 328, introduced by Monroe, reads as follows:

A BILL For an Act to add Section 2a to Article VI of "An Act relating to alcoholic liquors," approved January 31, 1934, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 2a is added to Article VI of "An Act relating to alcoholic liquors," approved January 31, 1934, as amended, the added section to read as follows:

ARTICLE VI.

Sec. 2a. No license shall be issued to a distributor to import beer manufactured in any State, the laws or rules or regulations of which have the effect of discriminating against the sale in such State of beer manufactured in Illinois.

KENTUCKY.

House Bill No. 42XXX, introduced by Gnau, April 18, 1936, reads as follows:

AN ACT relating to revenue and taxation and declaring an emergency.

Be It Enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. When by the laws of any other state any tax, fee, fine or penalty of any sort whatever is imposed

on any goods produced in Kentucky, greater than that imposed upon the same or similar goods produced in such other state, then the same tax, fee, fine, or penalty is hereby imposed on any goods produced in such other state and sent or imported into Kentucky.

Section 2. This tax is not intended to apply to goods or articles in interstate commerce and they are hereby expressly excluded from the provisions of this Act.

Section 3. The Department of Revenue of the Commonwealth of Kentueky is hereby charged with the enforcement of this Act and it shall have all power necessary to such enforcement in the collection of the taxes herein provided, including the institution of legal proceedings, and to promulgate such rules and regulations and preseribe such forms as it may deem necessary for the enforcement of this Act.

Section 4. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. Whereas, the Commonwealth of Kentucky is sorely in need of revenue for the maintenance of the several necessary branches of government, an emergency is hereby declared to exist and this Act shall become effective from and after its passage and approval by the Governor.

Ohio.

Chapter 15, Ohio General Code, Section 6064-67, (Liquor Control Act, 1935), provides as follows:

Sec. 6064-67.—If the laws of another state, territory or nation, or the rules and regulations of an administrative body therein, provide for or authorize the levy and collection of taxes, fees and charges upon or against the products of Ohio manufacturers of wine or manufacturers or brewers of beer and other malt liquors when such products are sold in, delivered or shipped into such state, territory or nation,

or any part thereof, in excess of the taxes, fees and charges levied and collected on the products of manufacturers or brewers of said state, whether such taxes, fees and charges are in the nature of an excise, sales or import tax, or by whatever name designated, the tax commission of Ohio is hereby authorized, and shall levy and collect additional taxes, fees, and charges on the products of manufacturers of wine or manufacturers and brewers of beer and other malt liquor of said state, territory or nation when sold in, delivered or shipped into this state, as hereinafter provided.

PENNSYLVANIA.

Public Law No. 15, Pennsylvania Liquor Control Act, (1933) (As Amended and reenacted by Act of July 18, 1935, Act No. 399), provides as follows:

Sec. 201. General Powers of Board.— * * *

* * * * * * * * *

(b) The board shall require each Pennsylvania manufacturer and each non-resident manufacturer of distilled liquors selling distilled liquors to the board, which are not manufactured in this Commonwealth to make application for, and be granted, a permit by the board before distilled liquors, not manufactured in this Commonwealth, shall be purchased from such manufacturer. Each such manufacturer shall pay for such permit a fee which, in the case of a manufacturer of this Commonwealth, shall be equal to that required to be paid, if any, by a manufacturer of of the State, territory, or country of origin of the distilled liquors, for selling liquors manufactured in Pennsylvania; and in the case of a non-resident manufacturer, shall be equal to that required to be paid, if any, in such State, territory, or country by Pennsylvania manufacturers doing business in such State, territory or country. In the event that any such manufacturer shall, in the opinion of the board, sell, or attempt to sell, distilled liquors to the board through another person, for the purpose of evading this provision relating to permits, the board shall require such

person before purchasing distilled liquors from him or it to take out a permit, and pay the same fee as hereinbefore required to be paid by such manufacturer. All permit fees so collected shall be paid into the State Stores Fund;

TEXAS.

The Texas Liquor Control Act, (Laws 1935, Second Special Session, Approved November 15, 1935) Article II, Section 5(g) provides:

Sec. 5. License fees and regulations. * * *

* * * * * * * * *

(g) There shall be levied and collected by the Board on all beer placed in warehouses or stored in this State an inspection fee at the rate of Fifty Cents (50c) per barrel; provided that any manufacturer of this State who shall have during the current year paid for a manufacturer's license under this Act shall be exempt from payment of the inspection fee; provided, however, that this inspection tax shall not be levied upon beer manufactured in a state that does not levy a similar tax upon beer manufactured in Texas and sold in such state.

APPENDIX F

ANALYSIS OF DISTRICT COURT OPINIONS RENDERED BY THREE-JUDGE COURTS SINCE ADOPTION OF TWENTY-FIRST AMENDMENT.

Appellants state in argument that since the adoption of the Twenty-first Amendment, the question presented by this appeal has been before district courts in eight different cases, and by some process of reasoning conclude that of the eight decisions the question has been determined favorably to appellants' position in four of the cases. This contention can best be refuted by an analysis of the cases.

One of the opinions referred to is the "Georgia" opinion. So far as appellees can ascertain, no such opinion was ever rendered upon this subject by a District Court of the United States in Georgia. The reference of appellants to a Georgia case apparently results from a mistaken reference of the court to such a case in the *Premier-Pabst Sales Company* v. *Grosscup,* (12 Fed. Supp. 970, E. D. Pa. 1935).

The case of *Joseph Triner Corporation* v. *Arundel,* (11 Fed. Supp. 145, D. C. Minn. 1935) is discarded by appellants by the mere statement that the court declined to pass upon the application of the 21st Amendment to those states that recognized liquor as an article of commerce, resting its decision entirely upon a violation of the 14th Amendment. It is true that the Court found it unnecessary to base its opinion upon the Commerce Clause alone, but the language used by the Court leaves no doubt as to the views entertained upon that subject. That case involved the construction of a statute of the State of Minnesota forbidding the importation by any licensed manufacturer or wholesaler of any brand of intoxicating liquor containing more than 25 per cent. of alcohol ready for sale without further processing, unless such brand should be registered in the United States Patent Office. No like registration of brands was required of intoxicating liquors manufactured within the state. It was said by the Court:

"The contention of the defendants is that chapter 390 represents a proper exercise of its police power by the state and is in no respect violative of the Constitution of the United States. They also contend that, since the adoption of the Twenty-first Amendment to the Constitution of the United States, neither the commerce clause nor the equal protection clause applies to intoxicating liquor, and that the power to control the manufacture, importation, and use of such liquor was, without any restrictions, conferred upon the states by virtue of the provision of the Twenty-first Amendment, that 'the transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.'

"With the contention that by this language it was intended that intoxicating liquors should be excepted from the provisions of the commerce clause and other provisions of the Constitution of the United States, we are unable to agree. The purpose of the provision referred to was to make it impossible for Congress to permit the transportation or importation into any state, territory, or possession of the United States of intoxicating liquors in violation of the laws of the state, territory, or possession. In other words, the provision left the states, territories, and possessions free to determine to what extent, if at all, intoxicating liquor should be a lawful subject of commerce within their limits."

The case of *General Sales & Liquor Company* v. *Becker* (14 Fed. Supp. 348, E. D. Mo. 1936) is apparently thought by appellants to be adverse to the contentions asserted in this case. The propositions therein decided are in entire harmony with appellees' position here and are, in fact, in support of it. The statute assailed limited a non-resident wholesale dealer in intoxicating liquors to sales to licensed wholesalers within the state, whereas a resident wholesale dealer was free to sell to licensed retailers. The discrimin-

ation there complained of was one against persons, the court clearly pointing out that no discrimination was made under the statute between products. That a state may entirely exclude a non-resident from engaging in the sale of liquors within its borders and limit sales solely by residents, no one will doubt. So holding, the court necessarily found that in limiting a non-resident in the sales which he made within the state to licensed wholesalers, no discrimination was made which was the subject of complaint by him. Again, the views of the court expressed upon the question raised in this appeal admit of no doubt as to the conclusion that a state statute may not be so designed as to discriminate against the products of another state. It was said:

> "The adoption of the Twenty-first Amendment has without doubt limited and qualified the commerce clause to the extent that state laws, regulating the importation of liquor into a state, place no prohibited burden upon commerce. This conclusion is in complete accord with that of the District Court in *Joseph Triner Corporation* v. *Arundel,* 11 F. Supp. 145, where it was determined that the purpose of the amendment was not to except intoxicating liquors from the provisions of the commerce clause. The amendment does recognize the authority of the state to regulate the movement of liquor into the state, and where availed of, as in this case, the importation of intoxicating liquors in violation of local law is outside the commerce clause."

The concurring opinion of Circuit Judge Farris clearly expresses the position of appellees in this case, wherein it is said:

> "So, the sole contention here made by plaintiff is that being a wholesale dealer, but a non-resident of Missouri, it is forbidden by the Liquor Control Act of Missouri to sell liquor to retail liquor dealers; while resident wholesale dealers may do so. There cannot, I think, be urged as existing any discrimination in the statutes attacked, as between liquors of

foreign manufacture and those of domestic manufacture; for the agreed facts disclose that both beer and distilled spirits of foreign manufacture can be sold, and are being sold, in Missouri by licensed resident wholesalers, without let or hindrance. So, I think the sole question in the case is, in the final analysis, whether the state of Missouri has the right under the police power to require by statute that a wholesale dealer in intoxicating liquor must be a resident of Missouri. This is conceded by plaintiff in its brief to be the sole question up for judgment, for it admits that 'the sole basis of the discrimination is resident or non-residence.' I think the alternative, that if such dealer does not see fit to become a resident of Missouri, then it must sell by or through such a resident, in no wise affects the principle involved. So, I repeat, the discrimination found in the Missouri statute is not against the commodities, but solely as to who may be licensed to sell them, and as seen this discrimination goes no farther than to require the seller to be a resident of Missouri. It is a *discrimination as to residence and not one of citizenship,* and no reason appears why plaintiff may not, by becoming a resident of Missouri, become qualified to sell both domestic or foreign liquors to retailers; so far, at least, as the two sections of the statute, herein attacked, are concerned. I am not saying that the necessity for a change of domicile might not in some situations be a burden on interstate commerce, but not in this case.

"Plaintiff bottoms its contention of discrimination on the alleged violation by the accused statute of the commerce clause of the Federal Constitution and of that provision of the Fourteenth Amendment which forbids any state to pass a statute which deprives any person of the equal protection of the law. It may urge, of course, both of the contentions; but not being a citizen, or even a resident of Missouri, and being a corporation, it may not rely on any right to an equality with citizens of Missouri,

under that provision of the Fourteenth Amendment which provides for an equality of 'privilege and immunities.'

"I agree with the view taken by the courts in the case of *Joseph Triner Corporation* v. *Arundel* (D. C.) 11 F. Supp. 145, and *Young's Market Co.* v. *State Board of Equalization* (D. C.) 12 F. Supp. 140, that section 2 of the Twenty-first Amendment did not have the effect to abrogate the commerce clause of the Federal Constitution, in those states of the Union which, as is Missouri, are as 'wide open' in the matter of liquor traffic as it is possible to be and as they were prior to the adoption of the Eighteenth Amendment."

Philip Blum & Co. v. *Henry* (D. C. E. D. Wisc., March 28, 1936), referred to in appellants' brief (p. 130), involved a statute of the same design as that involved in the *Becker* case. The difference of treatment by the statute was one relating to persons and not property. The non-resident vendor or licensee was more limited in the sale of intoxicating liquor than a resident holder of a like license. A statute of this type marks a sharp contrast from a statute of the type involved in this appeal wherein the commodity is discriminated against because of its out of state origin.

All that can be said for the case of *Premier-Pabst Sales Company* v. *McNutt* (D. C. Ind., Jan. 4, 1935), is that there was a case by such title instituted in the United States District Court of Indiana, but, following the submission of the case and before its decision, the law challenged was repealed by the Legislature of the State and a new bill was enacted. Prior to the enactment of the new law, Judge Baltzell prepared an unsigned memorandum opinion, which opinion was not concurred in by the other judges.

In *Pacific Fruit and Produce Co.* v. *Martin*, decided by a three-judge court, (D. C. W. D. Wash., Feb., 1936), a statute of the State of Washington provided that brewers and beer wholesalers, whose products were sold by license in the State, but whose plant or principal place of business was located elsewhere, should be deemed to be beer whole-

salers within the provisions of the law and should obtain wholesalers' licenses. In holding the Act invalid, the court disposes of the appellants' contention in this case by the use of the following language:

> "The statutes of which particular complaint is made, Section 2 of Chapter 158 of the Session Laws of 1935 and Section 3 of Chapter 174, of the Session Laws of 1935, if construed and applied as described in the bill of complaint, in conjunction, violate the commerce clause, Article 1, Section 8, Clause 3 of the Constitution of the United States, unless the Twenty-first Amendment repealed the commerce clause, insofar as interstate commerce in intoxicating liquor, is concerned. This it did not do. *Young's Market Co.* v. *State Board of Equalization,* 12 F. Supp. 140; *Joseph Triner Corporation* v. *Arundel,* 11 F. Supp. 145.
>
> "While it may be conceded that the intent of the Wilson Act, 26 Stat. 313, the Webb-Kenyon Act, 37 Stat. 699-49 Stat. 877, the Act of March 22nd, 1933, 48 Stat. 19, Sec. 6, referred to in defendants' brief as the 'Collier Act,' repealed and in part reenacted, 49 Stat. 877, Sec. 202 (a) and (b), and the Twenty-first Amendment, was to take from intoxicating liquor the protection of the interstate commerce laws insofar as necessary to deny them an advantage over the intoxicating liquors produced in the state into which they were brought, yet, none of them show an intent or purpose to so abdicate control over interstate commerce as to permit discrimination against the intoxicating liquor brought into one state from another.
>
> "It has been contended, upon behalf of defendants, that Section 2 of Chapter 158, *supra,* of which complaint is made, does not so discriminate. With this contention we are unable to agree. This enactment, in the case of intoxicating liquor made and purchased without the State, denies to the owner the right to use it as he could use it if made within the

state. If made within the state both the owner and the state could reach the manufacturer and compel observance of its law or obtain relief for its violation, but neither the owner nor the State has such power over the outside manufacturer who in no way is within the state.

"It follows that Section 2 of Chapter 158, *supra,* is void, not only because it violates the commerce clause, Article I, Section 8, Clause 3, but also the Fourteenth Amendment, in that its endorsement, as proposed, would take from the plaintiff its property without due process of law, and also in that it denies plaintiff the equal protection of the law. *Young's Market Co.* v. *State Board of Equalization,* 12 F. Supp. 140.

"If the decision of the District Court for the Eastern District of Pennsylvania, in *Premier-Pabst Sales Corp.* v. *Grosscup, et al.,* 12 F. Supp. 970, is opposed to any of the conclusions which we have reached we feel constrained, both upon reason and the persuasiveness of the authorities herein cited, to so hold without qualification. * * *

"The orderly and secure regulation of the manufacture and sale of property in each of the states by such states and of the regulation and fostering of commerce between them require that neither trammel nor encroach upon that authority which belongs to the other. The authority of neither is to be extended by construction of constitution or statute beyond what is clearly implied from the recognized authority of each. This enactment attempts to reach beyond the State's actual authority and take something from that of the nation, a sister state and the individual."

The case of *Premier-Pabst Sales Company* v. *Grosscup,* (12 Federal Supplement 970, D. C. E. D. Pa. 1935), is concededly adverse to the position of the appellees in this case. The decree of the trial court dismissing plaintiff's bill was affirmed by this Court solely on the ground that no

justiciable controversy was presented by appellants in that it was in no position to complain of the discrimination of the statute. As evidenced by the language of the court in the *Pacific Fruit* case, appellees are not alone in their disagreement with the logic of that opinion.

Thus, an analysis of the cases, important to this Court only for the logic and reasoning employed, discloses that but one of the six cases decided since the adoption of the Twenty-first Amendment holds to the contrary of appellees' position. No importance may be attached to the denial of the petition for certiorari by this Court in the case of *Rosen* v. *Fry,* 296 U. S. 526. The petition was denied on the ground that there was not properly presented a substantial federal question, this not because there was no substantial federal question involved, but because it was not properly presented. The fourth paragraph of the petition referred to in appellants' argument discloses the very legal insufficiency of such petition to raise the federal question before this Court.

APPENDIX G

The following statement from an Article by D. O. McGovney, now Dean of California Law School, in 3 Iowa Law Bulletin 145, May, 1917:

> "Can a state prohibit receipt within the state or transportation into the state of interstate liquor while leaving open traffic in home produced liquor? The Webb-Kenyon Law, taken literally, seems to permit this. It will doubtless be held, however, that it is not within the intention of the statute to deprive transportation of intoxicants into such a state of its interstate character. See the similar holding as to the Wilson Act, *Scott* v. *Donald,* (1897) 165 U. S. 58, 100—'That law was not intended to confer upon any state the power to discriminate injuriously against the products of other states, * * * evidently equality or uniformity of treatment under state laws was intended.' See also the dictum in *Plumley* v. *Massachusetts,* (1894) 155 U. S. 461, 471."